

JUNE 1, 1767.

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R E P L I E S

F O R

H (A. J. E.) Baron Douglas

ARCHIBALD DOUGLAS of Douglas, Esq;
and his Curators,

T O T H E

ANSWERS and OBSERVATIONS for GEORGE-
JAMES Duke of Hamilton, and others, relative to
Godfroi's Books.

IT has been fully explained in the defender's memorial, that, in the outset of this cause, and during the progress of it, down to a very late period, the great weight of the argument maintained by the pursuers, and of the evidence attempted by them in France, was laid on the records and books of police, from which they insisted it would appear, that Sir John Stewart, Lady Jane Douglas, and Mrs. Hewit, had entered to the house of Michelle on the 8th July 1748, and were again in the house of Godfroi on the 12th of that month.

In what manner, and for what reasons they were obliged to abandon that ground, has also been explained. The household-book of Godfroi was from the beginning known to them, but that they paid as little regard to it as the defender still does, they themselves have admitted. The registers and books of police were found to be inconclusive, and it became a matter of necessity, either to give up the pretended *alibi*, on which their cause chiefly rested, or to betake themselves

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selves to a new hypothesis, founded on the blank account in Godfroi's household-book in July 1748. This last they accordingly made choice of, and, upon that footing, their cause was pleaded before your Lordships.

The defender, in order to give the court some idea of the nature of these books, and from thence to demonstrate the insufficiency of this new plea, thought it necessary to make a search into the books, and to take some excerpts from them, which he subjoined to his memorial. The meaning of these excerpts was, in general, to shew, that the books were irregular, and not to be relied on; that they were full of blank articles, which could not be applied to any person; that they did not contain all the persons or companies that lodged in the house; that the police-book was manifestly defective; that even the household-books were imperfect and erroneous; and, lastly, that Godfroi and his wife, in their explanations of these books, had, in sundry particulars, sworn contrary to truth.

After the memorials were given in, the defender was allowed to extend these excerpts, and make additional observations upon them. Both parties were also allowed to put in additional memorials on the whole cause, if they thought proper; and the defender's council have great doubt, whether, in justice to their client, they ought not to have made use of that privilege. Certain it is, that liberties, the most extraordinary, have been taken by the pursuers, and that, in every branch of their elaborate memorial, facts are advanced, and arguments maintained, which have no sort of foundation in the proof, and admit of the clearest refutation. But, after some mutual conference, it was agreed, that no additional paper should be given in by either party, except on the particular subject of Godfroi's books; and what moved the defender to acquiesce in this proposal was, that, if a new argument was to be entered into upon the whole cause, he was afraid that this would draw into endless litigation; and he trusted to the candour of your Lordships, that you would form your judgments on reason and on proof, and not on the assertions of a party, or on clamour, unsupported by evidence.

A new paper of excerpts was accordingly put in for the defender, as soon as they could possibly be extracted from the books, with some few observations subjoined to them; and the pursuers, by way of answer, have given in another edition of the same excerpts, to which very full observations are also subjoined.—The last part of these excerpts and observations were furnished to the defender within these three weeks.

The pursuers, in this last publication, have laboured to establish two things: 1st, That the excerpts given by the defender are in some particulars

iculars erroneous. 2dly, That, in his observations, he has asserted facts, and ventured suppositions without evidence.

The first part of this charge the defender admits to be extremely probable. The intention of the excerpts was to give the court a general idea of the nature of these books, and he apprehends they will fully answer that purpose, supposing it should appear, that, in the investigation of such a parcel of confused, irregular, and almost unintelligible scrawls, for a period of three years, some few mistakes have been fallen into, though all possible care was taken to make them exact. The pursuers, it is to be supposed, have been no less careful in making this scrutiny, and they had all the advantage of the defender's labours, before entering upon the work; yet he will make it appear, in the sequel of this paper, that they have erred very greatly in a variety of particulars.

The second part of the charge, accusing him of assertions without evidence, was truly unexpected. The defender will be judged by your Lordships, whether the one party or the other has taken greatest liberties in this way, and has most indulged in suppositions without proof. Have not the pursuers, in almost every page of their memorial, substituted their own assertions in place of evidence? have they not strained facts beyond measure, making no distinction between the most feeble evidence and the strongest, treating even hear-say, and hear-say of hear-say as *demonstration*, appealing to their private memorials, and treating every proof on the other side as mere falsehood, and every witness as perjured? Nay, in these very observations do they not indulge themselves in fifty conjectures, (such as the fancy of Sir John, Lady Jane, and Mrs. Hewit's getting one-half of their breakfast from a coffee-house, and the other half from Godfroi,) without the vestige of probability? And do they not tell your Lordships a long story of Mr. Stuart's getting intelligence of Sir John's note about Michelle, from a gentleman, whose name he will not mention, and yet the whole story is to be taken upon assertion?

But the defender shall proceed to the proper business of this paper, which is to take a view of the excerpts, furnished by the pursuers, and observations relative to them; and, as these last are partly scattered through the excerpts, and partly subjoined to them, it is believed the shortest and most distinct method of taking in the whole, will be to follow the order of the thirteen observations subjoined to his own excerpts, and, in supporting them, he will have occasion, in the way of reply, to state all that is necessary to be said either upon the excerpts themselves, given by the pursuers, or upon any of their remarks, whether interspersed or subjoined.

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One thing however must be premised and always kept in view, which is, that a very nice and critical discussion of the excerpts is by no means essential to the cause of the defender. Enough is confessed on all hands to establish the general proposition maintained by him, that no reliance whatever can be had on the books, as establishing an application of the blank articles, 4th July 1748, to Sir John Stewart Lady Jane, and Mrs. Hewit.

Memorial for
the pursuers,
part 3d,
branch 3d,
page 85.

The great and capital argument used by the pursuers on this head is, that an article occurs in the police-book, of date 7th July 1748, in these words: "Mr. Stewart, gentil homme Ecoffois et Madame son épouse," which must necessarily apply to Sir John, Lady Jane, and Mrs. Hewit; and, again, an account appears in the household-book, 4th July, and subsequent days, which, though anonymous, has the appearance of belonging to three persons; "If therefore it were to be supposed, that this article in the police-book, and the account in the household-book, did not relate to the same persons, the consequence would be, that this article relating to Mr. Stewart in the police-book, would have no account whatever corresponding to it in the household-book; and at the same time, the account commencing the 4th, and ending the 14th of July, in the household-book, would have no article corresponding to it in the police-book."

To this the defender makes answer, that, from facts admitted on all hands, there is nothing in the smallest degree unnatural in this supposition. Not only is it *possible*, that a person, or company, may be in the police-book, without having a corresponding account in the household-book, at the same time, that another person, or company, has an account in the household-book, without being in the book of police; but from acknowledged facts it is clear, that the case has *actually happened* in various instances.

From the particular manner of printing the excerpts taken by the pursuers, your Lordships would be apt at first view to imagine, that the first column contains all the entries in the police-book, and the second column all the entries in the household-books; and both columns are filled up in such manner, as to give the appearance of few or no blanks. In fact, the first column contains all the entries in the police-book, and six of these are admitted to have no corresponding entry, or article in the household-books. But the second column contains not much above two-thirds of the articles in the household-books; all the rest are admitted to have no corresponding entries in the police-book.—Persons, therefore, have confessedly been in the police-book, without being in the household-books, and confessedly in the household-books, without being in the police-book; but this is not all,

It is admitted by the pursuers, that Mr. de Pommery, marked in the police-book, between the 17th and 20th March 1747, has no corresponding account in the household-books. It is further admitted, that on the 7th March, there is an entry in the household-book in these words: " Mr. ——— est entré à souper, et une demoiselle ; that on the 16th March, there is an entry in these words: " M. de Choisin est entré à souper, Mad. et Mademoiselle sa fille, et 3 domestiques ;" that on the 26th March, there was an entry as follows: " M. de Jonquer est entré à dîner, who staid five days ;" that on the 27th March, " M. de la Buthoteri est entré à souper, and staid four days ;" that on the 28th March, " Monsr.— est entré à dîner, et Mr. son fils, et un garçon ;" that on the 29th March, " Mr. Boitest est entré à dîner, et deux domestiques : " not one of which persons are marked in the police-book. And, further, there is another person called Mr. Veaudrin, who appears to have entered to the house on the 20th March, and staid three days, without having any entry in the police-book, though entirely omitted in the lists given by the pursuers ; so that, at and about the same time, that Mr. Pommery was confessedly in the house, marked in the police-book, but having no corresponding account in the household-books, there were six or seven different persons, and companies, entered in the household-books, but not marked in the police-book.

In the same way Mr. de Lantage is admitted to have been in the house, and marked in the police-book, of date 7th February 1748, without having any corresponding account in the household-book. At the same time it is admitted, that Mr. ——— entered on the 29th January, and staid, at least, two days, as appears from the household-book, without having any entry in the police-book ; that Mr. Aubé entered the 4th February, and staid at least three days, as appears from the household-book, without having any entry in the police-book ; that Mr. Ducoudray entered on the 6th February, and lodged from that time to the 22d inclusive, as appears from articles stated to him each day in the household-book, without being entered in the police-book ; that Mr. de la Porte entered on the 14th February and staid sixteen days, without any article in the police-book, besides, Mr.— who entered on the 24th February. Here it must be confessed, that Ducoudray, at least, and Aubé, if not several others, were in the house, and had accounts in the household-book, without being in the police-book, at the very time that Lantage was in the house, marked in the police-book, and not in the household-books. It is extremely possible, that Mr. Lantage entered to the house the very same day with Mr. Ducoudray, to wit, the 6th, though not marked in the police-book till the 7th, as nothing is more usual,

than to observe persons marked in the police-book a day or two after their arrival. These dates are nearer one another than the 4th and 7th July, on the one of which Sir John Stewart arrived at Godfroi's, and on the other was marked in the police-book.

Pursuers Ex-
cerpts, page
19. No. 128,
and defender's
Excerpts, p.
107. Mr. Wright, merchant at London, is marked in the police-book, of date 12th May 1748, without any corresponding account in the household-book, and there are other persons in the household-book on the 6th and 9th May, and who were actually in the house on the 12th, without any corresponding entry in the police-book.

Purs. Ex-
cerpts, p. 27.
No. 194, p.
50. No. 331.
Def. Excerpts,
p. 115. Mr. Boites is marked in the police-book, of date 4th February 1749, without any corresponding account in the household-book, and Mr. Aublet appears in the household-book, on the 2d, 3d, and 4th February, without any entry in the police-book; besides, a Mr.—— who entered on the 9th, without being marked in the police-book.

Purs. Ex-
cerpts, p. 29.
No. 204 and
205. Def.
Excerpts, p.
116 and 117. Two gentlemen, Monf. Simon, and Monf. Gublin, are entered in the police-book, of date 17th March 1749, without any corresponding accounts in the household-books. From the 9th of that same month to the end of it, there are about seven different accounts to persons lodging in the house, who are not marked in the police-book.

From these facts, which are proved, and on all hands admitted, it is clear, in the first place, that the police-book does not contain entries for all the persons and companies who arrive at Godfroi's hotel: 2dly, That even his household-books do not contain accounts or articles for the whole of them; consequently, that no certain discovery can be made from any of these books, or from the whole put together, what persons or companies have lodged in the house, at any particular period: And, 3dly, it is clear, that persons and companies may be, and have been, marked in the police-book, without any corresponding entry in the household-books, at the very same time that other persons or companies may be, and have been, marked in the household-books, without any corresponding entry in the police-books; so that, supposing these last to be entered blank in the names, which they often are, it is a most fallacious and uncertain rule, to supply these blanks from entries of similar dates in the police-book.

The pursuers endeavour to make some apology for the six instances, confessed by them, of persons entered in the police-book, without corresponding accounts in the household-books, by observing that * three of them are officers, and the whole may have come late at night and gone away in the morning, before any account was opened for them. But, in the first place, with regard to the officers, there is not the least foundation for saying that Godfroi was more exact in marking officers in his

* In page 45 they say, that four of them were officers; but, in a note subjoined to page 80, they correct this as a mistake, and say, that three only were officers.

his police-book than other guests ; and, supposing he had been more exact, what then ? Surely it will not be denied, that these officers, whose names are in the police-book, were in fact in the house, and yet no account is opened for them in the household-books ; which therefore sufficiently proves the defender's assertion, That persons may be in the house, and marked in the police-book, without having any accounts in the household-books. For, as to the other supposition, of their coming at night and going away in the morning, or only entering to the house, and immediately leaving it, without taking any food, this is entirely chimerical ; and, even if it were true, would not account for their being entered in the police-book, and not in the household-book. For the pursuers have, at other times, supposed that Godfroi and his wife made it their study to enter all their guests names in one or other of the household-books, as soon as they arrived, but were more neglectful of entering into the police-book ; so that the names of these six persons ought more naturally to have been in the household-book, than in the police-book.

Another preliminary observation the defender will beg leave to make, because it also depends upon admitted facts, which is, that very frequently, of the same or a similar date with a particular entry in the police-book, there are two, three, or four, blank entries in the household-books ; so that, supposing the *nominatim* article in the police-book to apply to one of these corresponding entries in the household-books, the pursuers, without the gift of inspiration, cannot have any rule or data for determining whether the application ought to be made to one or other of the anonymous entries. Yet, in the course of their excerpts they have, from mere conjecture or fancy, pretended to make a choice in various instances, some of which shall here be pointed out.

Mr. Sprecher, Major of the regiment of Plantin, is marked in the police-book of date 28th September 1747. He has no entry by name in the police-books ; but there are two blank entries, one on the 27th, and another on the 30th September, as follows : " 27th September, Mr. ——— est entré à soupée, et un garçon. 30th September, Mr. ——— à soupée, et deux domestiques." The pursuers, in their excerpts, apply the blank article 27th September to Mr. Sprecher, and leave the article 30th September without any application. But, supposing there had been no such blank article as that of the 27th September, would they not have insisted equally, that the blank article 30th September applied to Mr. Sprecher, agreeable to the argument maintained by them in page 67 of their Observations, where they are at great pains to prove, that the police-book is often antedated, and that it is of no consequence though a person should appear

Pursuers Ex-
cerpts, p. 139,
No. 71.
Def. Ex-
cerpts, 102.

in the police-book two or three days before being in the household-book.

Purs. Ex-
cerpts, p. 33,
No. 236.
Def. Ex-
cerpts, p.
119.

In the same way Monsf. Winckrelman appears entered in the police-book, some time between the 17th and 19th of May 1749, without any corresponding account, by name, in the household-books; but the three following blank entries occur: "15th May, Monsf. ——— est entré à diné. 17th May, Monsf. ——— est entré à soupeé. 21st May, Monsf. ——— est entré à soupeé." The pursuers have chosen the article 17th May, but why not take that of the 15th May?—It is just as possible that Monsf. Winckrelman entered the 15th, as that he entered the 17th, there being no visit of the inspector from the 14th to the 19th; and, according to the argument maintained by the pursuers, in page 67, &c. of their Observations, it is likewise extremely possible that the article 21st May may apply to him.

Purs. Ex-
cerpts, p. 9,
No. 36.
Def. Ex-
cerpts, p. 98.
and 99.

In the police-book there is a visa of the inspector marked, of date 5th May 1747, subsequent to which, and prior to a visa of the 12th May, there is an entry of a gentleman called Mr. de Reigenbery, but the particular day of whose entry is not marked; and this gentleman has no corresponding account, by name, in the household-books; but the three following blank articles occur in these books: "Thursday 5th May 1747, Monsieur ——— est entré à soupeé, et un cheval. Monday the 8th, Monsieur ——— est entré à soupeé. Wednesday the 10th, Monsieur ——— est entré à soupeé." The first gentleman staid two days, the third nine days, and how long the second staid does not appear. The pursuers have applied the first of these articles, viz. the gentleman who entered on Thursday, and only staid that day and the next, to M. Reigenbery, and have left the other two without any application: But by what rule, or what principle, does not appear, as they have just supplied the blank, without making the smallest observation upon it. If conjecture is at all to be allowed, the defender cannot help thinking that they ought rather to have chosen the second or third gentleman, as M. Reigenbery probably came to the hotel subsequent to the visa on the 5th; and it will be observed, that there is a mistake with regard to the date of the first person's entry, for Thursday happens to be the 4th and not the 5th.

Purs. Ex-
cerpts, p. 9,
at the top.

The result of these preliminary observations depending on *facts admitted*, clearly is, that the whole applications made by the pursuers of blank articles in the household-books, to *nominatim* entries in the police-book, are founded merely on conjecture, which may be right, or may be wrong, and on which it is impossible that any court can have the smallest reliance.

This being kept in view, the defender proceeds now to consider the *disputed facts*; and he shall follow the order above mentioned, beginning with

FIRST

FIRST OBSERVATION.

The first observation which the defender had occasion to make was, that there were many instances of persons, and even of families, lodging in Godfroi's, during the period of the Excerpts, viz. in the years 1747, 1748, and 1749, whose names were entered in the police-book, but who had no account or entry in either of the household-books; that a considerable number of these were such as could not be disputed, though others of them, perhaps, might be applied by conjecture to anonymous accounts stated in the household-books. At the same time the defender endeavoured to shew, that these conjectural applications could not be admitted. And, lastly, he mentioned, that, from the confusion of names, and irregularity of the books themselves, he had, in his former Excerpts, fallen into some mistakes, both *for* and *against* himself; that, in particular, there were some instances of names in the police-book, to whom he had allowed no corresponding entry in the household-books; whereas now he observed, upon a more accurate inspection of the books, that they had corresponding entries: But that, on the other hand, he had, in his former examination of the books, overlooked some instances of persons in the police-book, who had no corresponding entries in the household-books: So that, upon the whole, the instances which fell to be classed under this head, were more in number than he had formerly made them.

The answer made by the pursuers is, in substance, that there is not Answer. a single instance, during the above period, of a family lodging in Godfroi's house, whose names are entered in the police-book, without a corresponding account in the household-book; and that there are but six instances, even of single persons, in that situation; that though the defender has multiplied the instances to the number of forty-two, yet no less than fourteen of these apply *nominatim* to persons in the police-book; and twenty-two, though not applying *nominatim*, are applicable from circumstances, viz. by supplying blanks from conjecture.--- And they make a great parade of the defender's having expressly acknowledged two mistakes in his former Excerpts, and tacitly acquiesced in four others, by correcting them in his new Excerpts.

As to this last observation, the fact is true, that six instances, which Reply. had been stated in the former Excerpts as having no corresponding accounts in the household-books, are corrected in the new Excerpts; and the reason why two of them only are mentioned narratively, whereas the whole are in fact corrected, is, that, in the hurry of making these excerpts and observations, and furnishing printed copies of them to the pursuers, so as to give them an opportunity of making their answers in due time, the Observations on this first article were thrown off, and delivered to the pursuers, before the Excerpts were compleated for the year 1749; and the four instances not mentioned, though in fact corrected,

rected, happen to be in that year. But when the pursuers make so great a noise about mistakes in favour of the defender, which were thus corrected, they ought at the same time to notice, that there were no less than thirteen mistakes *against himself*, which had also crept into the original Excerpts, and which he had occasion to correct at the same time that the six in his favour were rectified: So that, after this second scrutiny, which was made with all the attention possible, the instances appeared on the whole to amount to seven more than had formerly been stated; the instances in the first excerpts amounting to thirty-five, and in the second to forty-two.

At the same time the defender did expressly inform your Lordships, that many of these instances would be disputed, though a considerable number of them were clear, and could not admit of the smallest doubt. Accordingly it has so happened. Some of them are *admitted* by the pursuers to be clear, others are *disputed*. But because they are disputed, it does not follow that they are *mistakes*. The defender is now to examine whether the one party or the other is in the right with regard to these disputed articles; and he hopes at least to make it appear, that many more than the six admitted by the pursuers are clear in his favour.

Pursuers Excerpts, p. 42.

The pursuers, in the first place, give a list of fourteen articles in the police-book, for which they say there are *nominatim* entries in the household-books, though stated without any corresponding entries by the defender. And this they call the *first list of errors*. These are Monsieur et Mademoiselle Vaupral, Mr. de Loras, Mr. Bouffler, Mr. Gau, Mr. Poumier, Mr. de Monfroy, Mr. Mahon, Mess. Tassin, Mr. de Brianne, Mr. l'Abbé de Longuay, Mr. Blondelle, Mess. Tassin, Monf. Paufmie and Monf. Moncomble.

Upon examining these instances your Lordships will observe, that none of them have an exact or obvious correspondence with the articles applied to them in the household-books. And, though from circumstances and similarity of names, it is possible to make a conjectural application of *some of them*, yet this is mere accident and guess-work; and many of them are of such a nature, that they cannot, by the utmost straining, be brought to agree.

1st Instance.

Pursuers Excerpts, N. 19, and 20.

The first article in the list is that of Monsieur and Mademoiselle de Vaupral d'Anvers, entered in the police-book, 8th April 1747, to which the pursuers endeavour to apply an account in the household-book belonging to Mr. de Vauprade, beginning in March 1747, in the course of which it is mentioned, that on the 1st April, "Mademoiselle sa sœur est entré a soupée;" and on the 6th April, a brother, who had frequently dined and supped with them, is also mentioned as having entered at dinner.

As neither the names, the dates, nor the number of persons are the same with those in the police-book, the defender, in making out his excerpts could not admit them as applying; and he does still apprehend it to be at least an equal chance that they do not apply. The pursuers are in a mistake in saying, that in the continuation of Mr. de Vauprade's account, in page 14th in the household-book, his name is written Vaupral. It is true he is there called Vauprat, which has much the same sound with Vauprade. But there is no Monf. Vaupral in any Part of the household-book. Besides, the M. and Mademoiselle Vaupral mentioned in the police-book on the 8th April, are there entered as having arrived in the hotel at the same time, and as having come from Antwerp; whereas, from Vauprade's account it appears, that his brother and sister had been long in Paris, and entered to the hotel at different times.

After all, it is a *possible* case that these articles of Vaupral and Vauprade may apply, though *ex facie* of the books there is no correspondence except what arises from the similarity of names, which is a most uncertain and fallible rule. A remarkable proof of this appears from another part of the Excerpts, where it is mentioned that two different persons, one of them called Mr. Caré, the other Mr. Caron, entered to supper upon one and the same night, viz. the 17th September 1747; one of these only, viz. Mr. Caré, is marked in the police-book. Now, suppose Mr. Caré had been omitted, or entered blank in the household book, would not the pursuers have insisted in the same way as they do here, that the other person Mr. Caron was the same with Mr. Caré, and that there was a *nominatim* correspondence betwixt these two articles.

The second article in this list of supposed errors is that of Mr. Loras, Madame son epouse, and Mr. son fils, who are entered in the police-book of date 10th April 1747. To this the pursuers endeavour to apply an account in the household book, beginning Friday 7th March 1747, and at the top of which they say the name of Loras expressly appears.

In order to shew your Lordships how this matter stands, it will be necessary to transcribe from the household-book the article in question with some of those preceeding and subsequent, which may be done without taking in the whole particulars of each account, but only giving the first and last articles of them.

Mars 1747, du Jeudy 16.	Monf. de-Choiffin est entré à soupée, Madame et Mademoiselle sa fille, &c. After which follows their ac- count, which is drawn out at the end. 10 9	X Mars 1747, du Mecredy 22.	Monf. Croyson est entré à soupée. After which follows his ac- count Monf. Croisson m'a laissé en total 1300
Mars 1747, du Vend. 17.	Monf. Parmantier est entré à diné. After which follows his ac- count 23	Mars 1747.	Monf. Gavault d'autre part. After which follows his ac- count 29 1 Reçu 120
Mars 1747, du Lundi 20.	Monf. Beaudoin est entré à diné. After which follows his ac- count 123 1	May 1747. du Lundi 15.	171 0 Monf. Dubois est entré à diné. After which follows his ac- count 44 9
Avril 1747, du Sam. 15.	Monf. Camparot est entré à soupée. After which follows his ac- count 59 2	Mars 1747, du Mardy 28.	Monf. ——— est entré à diné, Monf. son fils un garçon et deux cheveux. Then follow some articles fur- nished on the 29th, 30th, and 31st. After which the account is drawn out 31 7 Then follows an article Un boisseau d'avoine et une botte de foin 1 5
Mars 1747, du Lundi 20.	Monf. ———, est entré à diné. After which follows his account. Pour le Compt de Monf. Veau- drin 18 14		Monf. de Loras 32 12
Mars 1747, du Mecredy 1.	Monf. Berthelin est entré à diné. After which follows his ac- count 66 18	Mars 1747. du Vend. 7.	Monf. est entré à soupée, Madame son epouse et Monf. son fils. After which follows his ac- count 22 12
Mars 1747, du Vend. 17.	Monf. Salen est entré à diné. After which follows his ac- count 56 3 6 0	Avril 1747, du Diman. 9.	Monf. Vauvray de Rethel est entré à soupée. After which follows his ac- count.
Mars 1747, du Mardy 21.	Monf. de Charnafay est entré à diné. After which follows his ac- count 11 4	Avril 1747, du Mecredy 19.	Monf. Bidet est entré à soupée son fils, &c. After which follows his ac- count. 36 11
Mars 1747, du Diman. 26.	Monf. de Jonquier est entré à diné. After which follows his ac- count 16 7	Mars 1747, du Mecredy 29.	Monf. Boiteff est entré à diné. After which follows his ac- count 35 12
Avril 14, Du Venedredy.	Monf. Le Compte de Fruges est entré à diné. After which follows his ac- count 609 3		

The defender did naturally suppose the name of Mr. Loras to belong to the account, 28th March, which had been opened blank in the beginning; and, from a comparison of other parts of the book, particularly of the Excerpts which have been now given, he still apprehends it to be very clear, that this is the case, and that the pursuers are mistaken in applying it to the account 7th March. The words *Mr. de Loras* are placed at the foot of the account 28th March, opposite to the summing of that account; and this is precisely agreeable to what appears in a preceeding article, viz. that of Mr. ———, who entered on the 20th March 1747, at the foot of whose account there is "Pour le Compt de Mons. Veaudrin, 18 livres, 14." after which a black line is drawn between the close of that account and the opening of Mons. de Parmentier's. In the very same way, Mr. de Loras's account is first opened blank on the 28th March 1747, and at the end is summed up in this manner, Mr. de Loras 32 livres, 12. after which a black score is drawn, and a new account is opened for another person, whose name is not filled up.

The pursuers have applied Mr. de Loras, not to the account 28th March, to which he naturally belongs, but to the subsequent blank account of 7th March, for no other reason but because it is their interest to suppose him to belong to this account rather than to the other. But had they been equally interested in making him apply to the account 28th March, they would have maintained, and with much more apparent reason, that he certainly did belong to that account. The more especially, as it will be observed that, in order to make out their present supposition, they are obliged also to maintain, that March is wrote by mistake in place of April, upon this single ground, that an account 7th March ought not to have followed one of the 28th March, when, at the same time, from the Excerpts above given of the preceeding and subsequent accounts, and indeed from Godfroi's deposition, it appears, that no order of that kind is observed in writing these accounts. For example, nothing is more usual than for an account in March to follow one in April. Mr. Blondel's account is opened on the 29th June 1749, and continued down to the 18th July; after which, on the same page, an account is opened for Mr. Poloncaux, upon the 19th June. And as to the observation that the 7th March did not happen on a Friday, the pursuers will find many mistakes of this kind in the book. It is just as probable, that the day of the week was mistaken, as that one month was wrote for another; more especially as there is another account precisely in the same situation, beginning Friday 7th March, which the pursuers admit belongs to a person who had entered the 7th March, and not the 7th April.

That Godfroi was not always exact in mentioning the days of the week on which his guests arrived, is proved by many instances in the

books ; one particularly in the month of May same year, where a person is entered as arriving on Monday the 1st May, and another on Thursday the 5th May. If Monday was 1st of the Month, Thursday could not be the 5th. Again, a person is said to have entered on Wednesday the 20th June, and another on Thursday the 29th.—More instances of this will hereafter be given.

But even supposing the month of April to have been intended in place of March, the persons to whom this account applied seem only to have staid two days in the hotel ; and therefore as they left it on the 9th, and Loras is not entered in the police-book till the 10th, they must have been quite different companies, as it will not be pretended that in any one instance it ever happened that Godfroi inserted the names of persons in his police-book after they had left his inn. No such thing is ever done by the hotel or inn keepers ; nor indeed would it answer the purpose of the police regulations that they should do so.

Upon the whole therefore, as to this article, the defender does maintain that the mistake lies with the pursuers, and that their application of it is clearly erroneous. Mr. Loras and his son appear to have been in the house in March, and staid two days and an half, but without being in the police-book ; and either the same, or another Mr. Loras, with his wife and son, have been in the house on the 10th April, and entered in the police, but without any corresponding account in the household-books.

3d Instance.
Purf. Exc.
N. 29.

The next disputed instance is that of Mr. Bouffler, entered in the police-book of date 14th April 1747. With regard to him the defender does indeed observe an account in the separate household-book, beginning 13th April, for a Mr. Bouffler, which may perhaps apply, though at the same time, from inspection of this account, it seems pretty clear that the person to whom it belongs did not lodge in the house. For he is only charged for particular dinners and suppers at the rate of one livre and an half for each meal, or three livres for dinner and supper, which is the ordinary of the house, and there is nothing stated for lodging. Now it will be observed that Mr. Godfroi, in his deposition, says, that he kept this separate book “ for the purpose of writing down in it the persons who did not lodge in his house, but who only came to eat there ; and also some particular Persons who did lodge there, but at a price under the ordinary rate, being the deponent’s relations, friends, or other persons for whom the deponent had a particular consideration.” The Mr. Bouffler, therefore, who is entered in the separate book, must have been in one or other of these situations, either a person who frequented Godfroi’s house by way of an ordinary or eating-house, without lodging in it, or a friend of Mr. Godfroi’s, who lodged in the house, but was entertained below the ordinary.

Purf. pr. 839,
E.

ordinary. That the last was not the case is apparent from the account itself, in which his dinners and suppers are stated at the ordinary of three livres; consequently it follows that he was in the first situation, viz. of an eater in the house, and not a lodger. It was for this reason that the defender did not suppose him to be the same person marked in the police-book as lodging in the house. And indeed one of two things must necessarily be granted, either that the Mr. Bouffler in the police-book and the Mr. Bouffler in the separate book of expence are different persons, or that Mr. Godfroi's deposition is erroneous in this particular.

The 4th article relates to Mr. Gau, who appears in the police-book immediately after a visit of the 6th October 1747, and before one of the 10th, in this manner, Mr. Camasat, et Mr. Gau, marchands de Troye. To him the pursuers have applied an article in the household-book in these words: "du Lundi 11. Mr. Gouault, est entré à diné," and they have converted Lundi into Mardi, which they suppose to be Tuesday, the 11th October, whereas, the month is not marked, and it plainly appears to have been Monday, the 11th September. The immediate preceeding account bears date in August, and the 11th September 1747, happened on a Monday. But the 11th October happened on a Wednesday, so that the account cannot apply to the month of October, whether Monday or Tuesday be meant on the margin.

This Mr. Gau or Mr. Gouault, supposing the names to be the same, appears to have been at different periods of time a lodger in this hotel, and, particularly, has been there for three days in September 1747, from Monday the 11th, to Wednesday the 13th, without being entered in the police-book. In October, the same year, either the same person, or another of a similar name, (for it is of no consequence which of the two was the case,) came to the house along with Mr. Camasat, and is marked in the police-book; but it is very clear, that he has no corresponding account in the household-book, though, by erroneous suppositions, the pursuers endeavour to make the above account of the 11th September apply to him.

The next instance is, that of Mr. Poumier, or Poumie, (for his name is very indistinctly wrote,) who is marked in the police-book between the 6th and 10th of October 1747, and to whom an account in the separate book, beginning 8th October 1747, in the name of one Mr. Paulmier, is applied. This application may possibly be right, but it is more probably wrong, for two reasons; in the first place, upon account of the difference of names; and, 2dly, because Mr. Paulmier, mentioned in the separate book, does not appear to have been a lodger in the house, any more than Mr. Bouffler, mentioned above. He appears

4th Instance.
Purf. Exc.
N. 73.

5th Instance,
Purf. Exc.
N. 77.

pears to have had no other connection with the house, than getting his supper in it for a certain number of days marked in the account, and he is charged for these suppers precisely at the ordinary of the house.

6th Instance,
Purf. Exc.
N. 116.

Next follows Mr. Monfroy, entered in the police-book between the 2d and 7th April 1748, and to whom an account in the household-book, beginning 28th March, in these words: "Messieurs de Monfon et—— font entréz à soupé," is applied. This account, say the pursuers, must belong to Mr. Monfroy, from the similarity of names, and to another person, called Mr. Huguet, who appears from the police-book to have come at the same time, and from the same part of the country.

Answer.

The pursuers are mistaken in saying, that Monfroy and Huguet are entered in the police-book at the same time. Their names are clearly wrote in that book with different hands, and in different articles, unconnected with each other, from whence the presumption is, that they were wrote at different times, and that the two persons came separately to the house. Further, it will be observed, that they are entered in the police-book after a visa of the second April, at which time, it is highly probable, they were not arrived in the house; and, therefore, an account commencing on the 28th March, ought not to be applied to them; neither is there any apparent similarity of names, the one being altogether blank in the household-book, and the other spelt quite differently. And, lastly, there is another account, beginning 10th April, for two blank gentlemen, which the pursuers would have had much the same reasons for applying to Messrs. Monfroy and Huguet, supposing the above article of Monfon had not appeared in the book.

Def. Exc.
p. 106.

7th Instance,
Purf. Exc.
N. 135.

The next is Mr. Mahon, who is entered in the police-book, between a visa of the 19th, and one of the 26th June 1748, in this manner: "Mr. Mahon procureur du roy de Troye;" to him the pursuers apply an account in the household-book, beginning as follows: "Friday, 21st June 1748, Mr. Descourbons entered to supper," and they say, that by investigation of the books, they have discovered, that Mr. Mahon and Mr. Descourbons were the same person.

Purf. pr.
p. 842, C.

If this be a mistake in the defender, it is at least a very excusable one, for it is a mistake which the pursuers themselves have fallen into in their memorial, (part 3d, page 105) where they admit this article of Mr. Mahon, as one of the instances of persons entered in the police-book for the year 1748, without any corresponding account in the household-books. Nay, it is a mistake, which Mr. Godfroi himself has been guilty of, for in his deposition he expressly says, that he can find no account corresponding to Mr. Mahon. This at least is a specimen

specimen of Mr. Godfroi's weakness of memory as to persons, whom he had more frequent opportunities of seeing, and whom he ought to have remembered better than Sir John Stewart. For Mr. Mahon, if he be the same with Mr. Descourbons, appears to have been frequently in the house, and sometimes marked under the one name, and sometimes under the other.

The next instance appealed to is, that of Messrs. Tassin, freres, ^{8th Instance, Purf. Exc. N. 154.} marchands d'Orleans, entered in the police-book, of date 7th October 1748, to whom an account is applied in the separate household-book, beginning in this manner, "Wednesday, 18th September 1748, Mr. Tassin fils à diné," in the continuation of which account it appears, that a brother of Mr. Tassins sometimes also dined and supped in the house.

These articles have an appearance of corresponding, but there are two reasons, which moved the defender to think, that they did not apply, in the first place, because Mr. Tassin, in whose name the account is opened, is marked in the household-book as early as the 18th September, and his brother is not mentioned for a considerable time after; whereas, the two persons of that name, mentioned in the police-book, are entered at one and the same time, and as far down as the 7th October. 2dly, Neither the Mr. Tassin, in whose name the account is opened, nor the brother, seem to have lodged in the house, as they are stated for dinners and suppers, and other articles, at the ordinary rate, without any mention of their having lodged.

The next is Mr. de Brianne, procureur du Roy de Bar sur Aube, ^{9th Instance, Purf. Exc. N. 191.} marked in the police-book, between the 26th and 29th January 1749, as to whom it is said, that the same person appears entered in the police-book, of date 21st January 1749, with an account corresponding to him, which begins 19th, and ends 31st January, so that his being entered again in the police-book must have proceeded from mistake.

This is a supposition which the defender cannot admit to be well founded. Both the names in the police-book are wrote with the same hand, and on the same page, so that the persons must have been different, as it is otherwise incredible, that this name should have been wrote a second time by the same hand, and within two or three lines of the first.

The next instance is much of the same kind, Mr. l'Abbé de Longuay, ^{10th Instance, Purf. Exc. N. 232.} grande vicaire de Langre, is entered in the police-book between the 12th and 14th of May 1749, and the pursuers say, that this is also a mistake, as the Abbé de Longuay's name was already entered in the police-book, in April that year, at which time his account begins in the household-book. This proceeds upon the supposition, that

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there was not another person of the same name and designation in all France. Had they not been different persons, it is hardly to be supposed, that Godfroi, who is the writer of both articles, would have fallen into such a mistake, when he saw this man's name already wrote by himself in the same opening of the book.

11th Instance,
Purf. Exc.
N. 250.

The next article is that of Mr. Blondelle, "negotiant de Rotterdamme en Hollande," who is marked in the police-book, of date 14th July 1749, with regard to whom it is said, that Mr. Blondel appears, from the household-book, to have entered upon the 29th June, and to have left the hotel on the 31st, after which the same person returned on the 10th July, and staid some days longer. The defender, upon a more narrow investigation of the book, admits it to be extremely probable, that this article corresponds, tho' it will be observed, that the spelling of the name is somewhat different, besides a considerable variation in the time of entry in the one book and in the other.

12th Instance,
Purf. Exc.
N. 273.

The next article is "Mess. Tassin, freres, negociants d'Orleans," entered in the police, 19th October 1749, to whom an account, in the separate book is applied, though beginning as far back as the 20th September preceeding.

The reasons which induced the defender to believe that this article did not correspond, and which are still submitted, are precisely the same which have been mentioned under the 8th instance, which is also relative to these Messieurs Tassin.

13th and 14th
Instances,
Purf. Exc.
N. 298.

The two last instances relate to "Mr. Paulsmie, lieutenant à l'élection de Nemours, et Mr. Moncomble, procureur du roi de Nemours," entered separately in the police-book, of date 26th December 1749, to whom an account in the separate book is applied, which begins in this manner, "26th Decembre 1749, Mr. Paulmier et Mr. de la Combe sonts entré à soupé;" and the pursuers say, that both of these persons appear to have been in the house at other times, and their names sometimes spelled one way, sometimes another.

But with regard to Mr. Paulsmie, he appears both from his name and designation to have been a different person from the Mr. Poumier or Mr. Paulmier who frequented Godfroi's house, and who is designed "marchand," and not "lieutenant à l'élection." Had this been the person meant by the Mr. Paulsmie entered in the police-book, Mr. Godfroi could not have been at any loss for his name and designation, as he had been so often in the house. As to Moncomble and de la Combe, the affinity between these two names is rather too slender to make them pass for one and the same person, and even their professions appear to have been different; besides, if Moncomble had been the same person who had lodged for eight days in the house, only a few months before,

fore, it is not probable that they would have blundered so much about his name.

These are the whole *nominatim* instances, in which an application is inferred by the pursuers from similarity of names and other circumstances, and which they denominate their *first list of errors in the Excerpts given in by the defender*. In some of them it is very likely that the *conjectures* of the pursuers may be right, particularly in the two cases of Mahon and Blondel; but the far greatest part of them depend on mere supposition, contrary to the appearance of the books themselves, and unsupported by any evidence of the facts alledged. In several, it is clear that the pursuers are mistaken.

It was by no means necessary for the defender to enter into such a nice and critical discussion of these different articles; it was enough for him to maintain his general proposition, that instances occurred of persons and companies entered in the police-books, who have no corresponding account in the household-books, and, consequently, that it was by no means wonderful, that Sir John Stewart and his company, though marked in the police-book, should have no entry corresponding to them in the household-books, at least in those household-books which have hitherto appeared. Some instances have accordingly been admitted by the pursuers, which would be sufficient to establish the general proposition beyond a doubt, supposing the half, or even the whole of the above disputed articles were to be given up to them; at the same time, the defender has no occasion to make that concession, as he thinks he has been able to show, that their conjectural application of these fourteen articles, or, at least, of the most of them, are much more probably wrong than right, and in some of the instances clearly wrong.

Besides these fourteen, which they call *nominatim* instances, the pursuers are pleased to exhibit another list of twenty-two articles from the police-book, to which they apply *blank* accounts in the household-books; and this they denominate, *the second list of errors in the defender's Excerpts*. The reasoning of the pursuers, upon this second list, is really somewhat curious. From the nature of the thing it is plain, that the filling up of blank accounts in the household-books, from entries by name in the police-book, must depend on mere conjecture, without the smallest degree of evidence or certainty; more especially, where there are two or three blank accounts, which might equally apply to one person, which is very often the case; yet the pursuers do not scruple to tell your Lordships (in p. 42 of their Excerpts) that they have filled up these blanks in such a manner as *must afford conviction of the justness of the application made by them*; and having thus, as they think, deprived the defender of these twenty-two instances, as well as the fourteen

Purf. Exc.
P. 43.
teen

teen above discussed, they very confidently maintain (in p. 44) " That
 " no less than thirty-six of the forty-two supposed omissions in Mr.
 " Godfroi's books, rest upon *assertions*, on the part of the defender,
 " contrary to the evidence of the books themselves."

The defender will be allowed to say, that a more extraordinary assertion has not been made by either party since the beginning of this cause. Of these twenty-two blanks, there is not one which the pursuers have not filled up upon mere *assertion*, without evidence or presumption, and many of them contrary to every appearance of *probability*, and yet they take the liberty of saying, that the defender's non-admission of these applications is an *assertion* on his part.

The defender will beg leave to take a short view of these different articles, and when the facts relative to them are stated on both sides, your Lordships will then judge whether the one party or the other has been guilty of assertions.

Purs. Exc.
 N. 2.
 Def. Exc.
 p. 96.

The first instance of this kind is that of Mr. Labastide, entered in the police-book, of date 22d February 1747, to which they apply a blank article of the same date in the household-book, in these words, " Mr. est entré à diné." Their only reason for doing so, is the correspondence in time, and Mr. Labastide's having no other account in the household-books.

That he should have no account at all in the household-books, will not appear surprizing after the instances which have already been given of persons confessedly in the house, without having any account. And as to the correspondence in time, it rather makes against the application in this particular instance, because Mr. Labastide's name must have been known to Godfroi and his wife, when they opened the account of the 22d February; so that, had this account applied to him, his name would have appeared at the head of it. This, therefore, is one article of correspondence which depends on the *assertion* of the pursuers, without evidence or presumption to support it.

Purs. Exc.
 N. 5 and 6.
 Def. Exc.
 p. 96.
 Purs. Exc.
 N. 36.
 Def. Exc.
 p. 98, at the
 foot.

The same observation will apply to Jean Pierre Borkens, and Mr. Paul Vandermeir, being the second and third instances.

The next instance is that of Mr. Riegenberry, marked in the police-book between the 5th and the 12th May 1747, and to whom they apply a blank article in the household-book, bearing date Thursday 5th May, but which more probably ought to be Thursday 4th May, as the 5th May 1747 happened on a Friday. The defender has already had occasion to observe, that this is only one of several blank articles, any one of which might, with equal justice, be applied to Mr. Riegenberry. How, therefore, can the pursuers maintain, that they have applied this article in such a manner as to *afford conviction* to your Lordships of the justness of the application, or by what magick will they show

show that their application of this article does not depend upon *assumption*?

The next that occurs is Mr. le Chevalier de Beaupuits, entered in the police-book, of date 14th August 1747. To him the pursuers endeavour to apply a blank article, of date 8th August, in the household-book. This depends on mere conjecture. It appears, that the person to whom the account belonged, staid in the house till the 16th August; and as it appears that Godfroi knew Beaupuits's name, at least upon the 14th, he ought to have filled up the blank according to his general custom, had the account applied to him.

Mr. Sprecher, the next instance, is entirely in the same case with Mr. Riegenberry, as there are different blank accounts which may apply to him as above explained; and there is no reason for applying any of them further than mere conjecture.

The next instances are Mr. Crimot et Mr. Sauguac, both officers of the regiment of Camille, who are marked in the police-book between the 22d and 25th October 1747, and to whom the pursuers apply a blank article in the household-book, beginning as follows: "25 Octobre, Mr. font entrés à soupe et deux domestiques." And they say, that the four visas of the inspecteur of the 25th, 27th, and 30th October, and 4th November immediately following these two persons names in the police-book, were probably wrote at one and the same time, viz. on the 4th November.

As to this last observation, there is not the smallest evidence or probability of it. As Mr. Crimot and Mr. Sauguac are marked between a visa of the 22d and one of the 25th, it is uncertain whether they entered on the 22d, after the inspecteur's visit, or on the 23d, 24th, or 25th, before his visit; but it is pretty certain, that they did enter some time between the visit made by the inspecteur on the 22d, and his visit on the 25th; consequently, the blank gentlemen, who did not enter till the 25th at supper, which must have been after the inspector's visit of that date, cannot be the same with Mr. Crimot and Mr. Sauguac, unless the pursuers will admit that persons are sometimes in the hotel for days together, without being entered in the household-books, and even then it will be difficult for them to account for these gentlemen being entered blank in the household-book, on the evening of the 25th, when their names were known before that time, and inserted in the police-book. The pursuers have often maintained, that Godfroi is particularly exact in setting down the names of officers as soon as they arrive, and therefore they cannot be allowed, in this case, to argue, that Crimot and Sauguac may have been inserted at a distance of time after their arrival, and the visa's antedated.

As a further proof of the application of these articles, it is averred by the pursuers, that the account which immediately preceeds the blank account in the household-books, is that of Mr. Desjardins, and

the account which immediately follows it is Mons^r. de Jeanfin, exactly agreeable to the order in which the articles relating to Mr. Desjardins, the two officers, and Mr. Jeanfin, are inserted in the police-book. In fact, the order of the accounts, in point of date, is as follows :

Octobre 17. Mr. Desjardin.

Octobre 18. Mr. Montesquieu.

Octobre 18. Mr. de Melun.

Octobre 25. Mr. font entrés.

Novembre 6. Mr. de Jeanfin.

Purs. Exc.
N. 95.
Def. Exc.
p. 104.

Mr. de Manines, bourgeois de Paris, the next instance, is marked in the police-book as having entered on the 26th December, and the pursuers apply to him a blank account of a person who entered to supper that day. For this there is nothing but conjecture without probability ; for, as Mr. Manines's name was known on the 26th, it does not occur how he should be entered blank on the evening of that day in the household-book.

Purs. Exc.
N. 117.
Def. Exc.
p. 106.

Mr. Huguet, the next instance, has already been spoke to in treating of the article of Monfroy and Monfon ; several reasons are there urged, why this article cannot apply, and, with regard to Mr. Huguet, it is mere conjecture, without any corresponding circumstance, as the name is blank.

Purs. Exc.
N. 123.
Def. Exc.
p. 107.

As to Mons^r. de Senne, it is clear from inspection of the police-book, that he was entered in the police-book upon the 6th May 1748, which is the date prefixed to his name, for the immediate preceeding article bears date the 4th, and the subsequent article the 7th. It appears also, that the entry is made in the hand-writing of Madame Godfroi. To him the pursuers apply a blank account in the household-book, opened in the evening of the 6th, for a person who entered to supper. It is submitted, how far there is the least ground for supposing, that Madame Godfroi would open a blank account for Mr. Senne in the evening of that very day upon which she had inscribed him, by name, in the police-book.

It is to be observed, that Mr. Wright, marchand de Londre, is entered on the same page of the police-book with this Mr. Senne ;—if Senne had been omitted in the police-book, which, it must be admitted, was a very common case, the pursuers would have insisted that this blank account applied to Wright, and that they had filled it up in such manner as to afford *conviction* of their application being just ; though, by the accident of Senne's being entered in the police-book, they are obliged to allow that Wright has no account.

The next instance in this supposed list of errors, is that of Mr. Stuart, gentilhomme Ecoissois, et Mad. son epouse, to whom the blank account, of date 4th July, is applied.—The pursuers do not expect that this article will be yielded to them ; and therefore the defender shall only, at present, make one observation upon it, which is, that
this

this very article affords a remarkable proof how uncertain the pursuers conjectures must be, in filling up blank articles, from a seeming correspondence of circumstances; for it will be observed, that though Sir John Stewart's company did unquestionably consist of three persons, to wit, himself, Lady Jane, and Mrs. Hewit, yet two of them only are marked in the police-book; so that, supposing it were not now known that there was a third person in company, and supposing another blank account appeared in the books, of date 4th July, which seemingly applied to two persons only, it might, with equal reason, be maintained, that this account for the two persons belonged to Sir John Stewart and his company, and to none other.

The pursuers have, in various instances, insisted upon the application of blank articles in the household-books, to persons entered by name in the police-book, merely because of a seeming correspondence in the number of persons; but, were it possible to make a scrutiny into the exact number of persons of which each company consisted, it is extremely possible, that many omissions might be found in the police-book, similar to that which has happened with regard to Sir John Stewart; and therefore it is *gratis dictum* to say, that because two persons are inserted by name in the police-book, or a company consisting of two persons, for example a husband and his wife, and an account appears blank in the household-book, corresponding nearly in date, and agreeing to two persons, ergo the one article must necessarily apply to the other. Were the *ex facie* appearance of the book the sole rule of determining, there would not be the shadow of a pretence for applying the blank account, 4th July 1748, to the entry in the police-book 7th July, of Mr. Stewart and his lady; at least, if the pursuers are right in the assertion made by them, that the blank account applies exactly to three persons, as an account for three persons can never be supposed to answer to a company of two persons.

And here your Lordships will attend to the reason assigned by Madame Godfroi for omitting to insert Mrs. Hewit: One of the ladies only is mentioned (says she) in the police-book, "because frequently the deponent does not write down, in the said book, chambermaids or servants." Now, the defender does maintain, that if Mrs. Hewit was, on the 7th July, after having been three days in the house, considered by Madame Godfroi as a chambermaid or servant, this of itself affords demonstration, that the blank account 4th July cannot apply to Sir John Stewart and his company; for the supposition of the pursuers all along has been, that the blank account applies exactly to three persons who were all upon an equal footing, and entertained at the ordinary rate of three livres each. At the same time, from numberless accounts in this household-book it appears, that the constant and uniform charge for servants was below *one-half* of the ordinary. One of two things, therefore, must necessarily be granted by the pursuers; either

either that the blank account does not apply to Sir John Stewart's company, or that Madame Godfroi has here assigned a false reason for omitting Mrs. Hewit in the police-book; for if the account 4th July applied to Sir John, Lady Jane, and Mrs. Hewit, Madame Godfroi, when she came to insert their names in the police-book upon the 7th July, could not have the smallest reason for mentioning one of the ladies, and omitting the other; as, from the face of her own account (supposing it to apply to them) she had from the beginning entertained all the three persons upon an equal footing, and knew no distinction among them: She ought therefore to have entered them, "Mr. Stewart and his wife, and another lady;" or, "Mr. Stewart and two ladies."

Purs. Exc.
No. 147.
Def. Exc.
p. 110.

The next instance is that of Bancarelle and his sister, marked in the police-book 8th August 1748, by Madame Godfroi, to whom a blank account is applied, for a gentleman and his sister, who entered in the evening of the 9th August to supper; and, in order to reconcile the circumstance of Mr. Bancarelle's being marked in the police-book, as lodging in the house, a day before any account was opened for him in the household-books, they are obliged to suppose, in this, as well as in other instances of the same kind, that the police-book is ante-dated.

It may be proper here to observe the strange variation of system which the pursuers have gone into with regard to these books. In the beginning of the cause, the police-books were cried up as evidence the most authentick and most infallible; whereas the household-books were considered as a parcel of scrawls, not to be regarded: And the defender must own that this distinction had, and still has, the appearance of being reasonable; for, by the laws of police, Godfroi and other keepers of hotels, are strictly enjoined to mark down every name and date, in the most regular manner, under a penalty of 300 livres for each error or neglect; whereas, on the other hand, their private books or jottings, intended for the purpose of helping their memory, and enabling them to account with their guests, may be kept in any shape they think proper, and are accordingly full of irregularities and blunders. But though this was the system at first adopted by the pursuers, and with apparent good reason, yet, having afterwards found it for their interest entirely to reverse their former doctrine, they now tell your Lordships that the police-book is vitiated, ante-dated, and not to be relied on: They even assert, without evidence, that the inspector of police, a man entrusted by the government with an important charge, concurs in these irregularities: And, on the other hand, they maintain that a parcel of loose memorandums, kept without order or regularity, are to be held as compleat evidence of dates, and of every other circumstance. It once made for their purpose to extol the books of police, and to decry the household-books: It now answers them better to re-

verse

verse the position, and to assert the authenticity of the household-books, at the expence of the regulations and laws of police, and even of the officers entrusted with the execution of them. Accordingly they at once change about, without scruple or apology, and they desire your Lordships to believe things quite the reverse of what they themselves once asserted.

The next instance is that of Mr. le Chevalier de Haales, who is entered in the police-book between the 3d and 8th March 1749; to him the pursuers apply an account in the household-book, of date 7th March, in the name of *Mess. de Pujet*; for no other reason, but that *Monf. de Haules* appears marked in the police-book immediately before Pujet; and that Godfroi does not appear at first to have known Haules's name, as it is interlined by him in the police-book, after the word *Captain*

Purs. Exc.
No. 199.
Def. Exc.
p. 116.

There is no circumstance from which it can appear, that these two persons came on the same day, and in the same company to the inn, on the contrary, they are entered in the police-book by different hands, and at different times. It is no doubt however possible, that the fact may be so, but there is nothing to instruct it, other than mere conjecture. If Godfroi did not know his name at first, and afterwards interlined it, it was as natural for him to do so in his household-book, as in the police-book.

As to Mr. De Vert, the fact supposed by the pursuers is extremely improbable, he is marked in the police-book of date 28th April 1749, by Godfroi himself, and the pursuers say he staid but one night, and went away in the morning; Godfroi therefore must have known his name, when he entered it with his own hand in the household-book upon the 28th, and yet a blank account for a person who came in the evening of that day to supper is applied to him. If blanks are to be admitted, there is another account, beginning the 11th April, which might with equal reason be applied.

Purs. Exc.
No. 221.
Def. Exc.
p. 118.

The next instances are those of Messrs. Cliquet et Mopinot, entered in the police-book between the 30th April and 5th May 1749, to whom the pursuers, upon mere conjecture, endeavour to apply an account belonging to another person, viz. Mr. Marlot, beginning 1st May, because in the account it is mentioned, that his son and two friends were along with him, who staid till the third May. Had the names of these two friends been known, they would have been mentioned in the household-book as well as that of Mr. Marlot; and it is to be observed, that in the police-book, Mr. Cliquet et Mopinot are entered conjunctly, not at the same time with Marlot, but some articles posterior to him, in the following manner:

Purs. Exc.
No. 228 and
229.
Def. Exc.
p. 118.

G

“ Mr.

" Mr. Marlot, controleur general de finances de Champagne et Mr. son fils.

" Mr. Beaudoin, inspecteur des ponts et chaussée d'Orleans.

" Mr. Taffin, capitain au regiment de Nice avec congé.

" Mr. Cliquet et Mopinot bourgeois de Reims."

From whence the presumption is, that they came in separate companies. Besides, although in the opening of Marlot's account, it is said, that two friends had come along with him; it would appear from the subsequent part of the account, that there was only one friend, as there are only six livres stated for two days entertainment of the friends or friend, which applies to one person, and not to two.

Purf. Exc.
N. 236.
Def. Exc.
p. 119.

Mr. Winckrelman, the next instance, appears entered in the police-book between the 17th and 19th of May, and to him a blank account, beginning 17th May, is applied, without assigning any reason; at the same time, there are other two blank accounts, one on the 15th, and another on the 21st May, which might equally apply.

Purf. Exc.
N. 246.
Def. Exc.
p. 121.

Mr. Henin, the next instance, is much in the same case with some of the others above mentioned. The entry of another person called Mr. le Pecheur, in the household-book, is endeavoured to be applied to him, upon account of a supposed connection arising from a Mr. Henin and a Madame le Pecheur, who had been formerly in the house. Had Mr. Henin been a person who frequented the house, his name would have been known, as indeed it appears to have been known, by his being marked in the police-book; and, therefore, a blank would not have been left for him in the household-book. Besides there is another blank account, dated the 4th July, which the pursuers might also apply to him, according to their doctrine of the dates in the police-books being erroneous.

Purf. Exc.
249.
Def. Exc.
p. 121.

Next comes Mr. de Haales again, who having returned to the house in July 1749, is entered in the police-book between the 2d and 7th of that month, and to him they apply a blank account, of date 4th July, upon this ground; that in the police-book, there are only two persons entered between the 2d and 7th July, viz. the Abbe Ansard, and the Chevalier de Haales; and in the household-books, the only two accounts commencing in that space, are that of Abbé Ansard, and the other account here applied to Chevalier de Haales.

Answer.

The pursuers are mistaken in saying, that Ansard's and the blank account are the only two commencing between the 2d and 7th July, they will find in the separate book, page 121, the account of one Mr. Caron, beginning on the 6th July. This reason therefore fails, and, besides, as Mr. Haales seems to have been a customer of the house, and his

his name formerly known, it is not probable that his account would have been opened blank.

The next instance, Mr. de Bellevue, marked in the police-book upon the 8th October 1749, has not even a blank account, which can possibly answer to him; but the pursuers say, that his name has been repeated in the police-book by mistake, for that he appears, in the first place, entered in the police-book, of date 6th August 1749, at which time an account was opened for him in the household-book, which lasted till the 27th September, and afterwards he returned to the inn upon the 30th October, of which date he is again entered both in the police and household book, so that the intermediate entry of him, of date 8th October, in the police-book, must have been owing to mistake.

Purf. Exc.
N. 271.
Def. Exc.
p. 123.

But, with submission, the pursuers are here mistaken in every article, Mr. Bellevue was clearly in the house at three different periods, first, upon the 6th August, at which time he stayed twenty-four days, (that is, to the 30th August, and not to the 27th September, as is erroneously said by the pursuers,) and at this time he was both in the police and in the household books, his name being entered in both by Madame Godfroi herself. Afterwards he came to the inn upon the 8th October, of which date he is again entered in the police-book, with Madame Godfroi's own hand, but no account is opened for him in the household-books. Lastly, he came to the inn a third time, in November that year, when he was once more entered in the police-book with Madame Godfroi's hand, and has an account in the household-book; so that the fact is undoubted, that at one of these three periods, viz. on the 8th October 1749, he was in the house, and entered in the police-book, without having any corresponding account in the household-book.

Answer.

The last instance is that of Mr. Dumoulier, entered in the police-book of date 8th November 1749, to whom a blank account of date 7th November is applied, upon conjecture, without any presumption or circumstance to support the application.

Purf. Exc.
N. 286.
Def. Exc.
p. 125.

Such being the nature of these disputed instances, the defender does, with submission, say, that in every one of them, the application made by the pursuers depends on their assertion, and that they have no title to denominate them a *list of errors in the defender's Excerpts*. And, upon the whole of this matter, the defender still adheres to his former position, that there are many instances of persons, lodging in Godfroi's in the period of these Excerpts, and even families, besides Sir John Stewart and his company, whose names are entered in the police-book, without any corresponding entry in the household-books. By families the defender means, a company, such as Sir John Stewart's, consisting

consisting of two or three persons, for it is seldom that a whole family, man, woman, and child, with all their servants and attendants, happen to lodge in a publick inn. Mr. de Loras, his wife and son, are one instance; Messrs. Tassin, freres, appear twice in the list; Mr. Bancarelle, and his sister, &c. At the same time it is of no manner of consequence, whether the instances consist of single persons, or of two, three, or more persons in company.

One reason formerly given by the defender for not admitting the application of blank articles in the household-books, to articles by name in the book of police, was, that upon searching into the household-books, he observed no less than seventy-nine instances of names, which, by inspection, appeared to have been filled up in the household-book, *ex post facto*, the meaning of which was, that the accounts had been originally opened blank, and the name afterwards inserted in the blank, as soon as it became known to Godfroi or his wife; so that the accounts still remaining blank, must have belonged to persons whose names were never known. At the same time, these instances were collected only from the household-book in process, which commenced in the 1749, and besides these, there were twenty-nine more which had been excerpted from the household-books lodged in the Tournelle, when inspection thereof for a very few days was allowed, and which are printed in the defender's proof, p. 1051, &c. Upon this foundation the defender insisted, that it was Godfroi's *universal practice* to fill up the names of persons who had been entered blank in his *livre de depense*, when informed of them during their residence in the hotel; and for proof of the assertion, he appealed to the above instances, amounting in whole to 106.

Purs. Exc.
p. 59, &c.

The pursuers are at great pains on the other hand to prove, that this was not the universal practice of Godfroi and his wife; and supposing they should be so far successful as to show, that this was not the *universal*, but only the *general* practice of Godfroi's house, it does not occur, that the argument would suffer any material alteration, for surely if it was the *general* practice of the house, to fill up these blanks whenever the persons names became known, the presumption is, that the accounts which still remain blank, belonged to persons whose names never were known, though one or two instances should appear to the contrary; and even if this presumption were entirely removed, and the practice appeared to be the very reverse of what it really was, it would still lie on the pursuers to prove their assertion, that the blank articles in the household-books, apply to this, or that particular person, entered by name in the police-book.

The argument, therefore, so strenuously maintained by the pursuers on this head, is of very little importance to them; at the same time

time the defender shall examine the instances which they give of supposed variations from the general rule.

The first person mentioned is Mademoiselle de Lormette, whose name, Purf. Exc. p. 60. say they, was certainly known, as she is entered in the police-book, and yet a blank account as certainly applies to her. But even allowing this blank account to apply, it will not answer the purpose, for this lady's name does not appear to have been known to Godfroi, or his wife, though entered in the police-book. The entry is there made, not by them, but by the inspector, who visited the inn while Mademoiselle de Lormette was in the house, and learned her name from some of the servants, possibly from the lady's own servant. It appears, that neither Godfroi, nor his wife, wrote one word in the police-book for several months about this time, and the account, which it is pretended applies to her, contains not one article furnished to her, so that they had no occasion to look at, or write one word in the account, from the moment of her entry till she was leaving the inn.

The second instance, supposing the blank to apply, is in the same p. 61. circumstances with the former, the names are wrote in the police-book by the inspector. It is observable, that the whole articles of their account, from the 1st to the 13th, have been wrote by Godfroi at one and the same time.—The third instance is also in the same circumstances, the entry in the police-book is neither wrote by Mr. nor Madame Godfroi.

As to the next instance of Jogue, the defender cannot admit the ap- p. 62. plication of it to the blank account; for as the entry in the police-book is made by Madame Godfroi on the 19th, it is not probable she would omit the name in opening an account in the household-book that same day; at the same time, as the persons, to whom the account applies, appear only to have staid till next morning, so that there is but a single article stated to them; it may readily have happened, that Godfroi, or his wife, did not think of filling up the name, though known to them.

The only other article stated as clear upon this head, is that of Mr. Lombard, and his nephew, which is no instance at all, as the name is wrote both in the one book and in the other, and the word *nephew* is only wanting in the household-book, which is nothing to the purpose.

Your Lordships will judge therefore, whether these five pretended instances of omissions, in opposition to 106 undoubted instances of the contrary practice, can, in the smallest degree, avail the pursuers. They indeed pretend also to bring in the twenty-two blank instances above discussed, which they apply by conjecture, but which conjecture has been shown to be inconclusive. At the same time it may be observed,

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that

that even of these twenty-two instances, ten of the names in the police-book appear to have been wrote by the inspector, when he visited the inn, or by the lodgers themselves, and were not probably known to Godfroi and his wife, so could not be filled up in the book. Of the other twelve there are three to whom not a single article is stated in their accounts, so that they appear to have staid only one night in the hotel. Five of the remaining nine staid only two days, and have very few articles stated to them. Another, Mr. Bellevue, has no account at all opened for him. Another is the blank person who entered 4th July. Another staid eight days, and only one a few days longer, so that if the account 4th July applies to Sir John, who is supposed to have staid ten days in the inn, and whose name, though not filled up, was certainly known on the 3d day, it will be almost the single instance, during the whole three years of an account in that situation. The fact is certain, that Madame Godfroi knew the name of Sir John Stewart on the 7th July, if not sooner, and even knew that Lady Jane was his wife, as they are entered in that manner, and of that date, in the book of police; yet Madame Godfroi and her husband, continue, according to the *assertion* of the pursuers, to write articles every day for these persons, from the 4th to the 13th inclusive, and even to renew their account, without filling up the blank which they saw before their eyes, a circumstance which cannot be paralleled by any one similar instance, from the beginning to the end of the books.

As to Godfroi's swearing, that he *often* filled up the names after they came to his knowledge, had he swore that this was his universal practice, without one exception to the contrary, there would have been no room for applying the blank articles 4th July to Sir John Stewart, which would have destroyed the very intention of his swearing, and put an end to the whole.

The pursuers say, that it was unnecessary to be punctual in filling up blanks, as Godfroi and his wife would easily know, from memory, what persons or companies each blank account related to. This argument is submitted to your Lordships: If it was at all necessary to open accounts for their guests, it was equally so to fill up their names; otherwise the greatest confusion must often have followed, by applying accounts to wrong persons. That Godfroi and his wife accordingly thought this necessary, appears from the hundred and six instances already appealed to. If, on the other hand, Godfroi and his wife could so easily retain in their memories the application of these blank accounts, they could, with equal ease, account altogether from memory, or at least, from the memorandums or schedules of their servants, as
must

must frequently have been the case ; more especially when a person or company staid but a few days in the house. It is a mistake to say, that two or more blank accounts were seldom current at the same time : From the third column of the defender's Excerpts it appears that this happened frequently.

The pursuers conclude their observations on this article with saying, that their application of the blank accounts ought to be adopted, because the defender has not been able to show any other persons to whom these accounts apply.

This is an argument, which it is the more improper in them to use, that they themselves rendered all enquiries of this kind impossible, by locking up the household-book in the Tournelle, where no inspection of it was obtained till the very expiry of the commission ; and the police-book, though recovered a year and a half before the examination of Godfroi and his wife, was kept from the knowledge of the defender's agents till within a few days of that period ; and then, the proof having been closed with their examination, and inspection of the books, it would have been a very idle measure in the defender's agents, to have staid perhaps a year or two longer in France, and to have demanded a renewal of the commission, in order to make enquiries over the whole kingdom, and perhaps in different parts of the world, for all the persons who had lodged in Godfroi's house during the currency of his books. Before getting inspection of the books, the defender had no data upon which such enquiry could be made ; and, after getting that inspection, it was greatly too late. Besides, it will be observed, that this is the first time the pursuers ever attempted to apply these blank accounts, at least any other except the account 4th July, to particular persons ; therefore, no such enquiry or proof on the part of the defender, could be thought necessary. It is the business of the pursuers to prove their assertion, that these blank articles belong to particular persons ; and it is enough for the defender to deny the fact, as the books themselves bear no application.

S E C O N D O B S E R V A T I O N.

The second observation subjoined to the defender's Excerpts imports, in substance, that the accounts in the household-book do not always contain the exact dates of the arrival of guests at the inn ; there being many instances of persons inscribed in the police-book, and living in the hotel several days before any account is opened for them in the household-book : So that there is no certainty that the persons to whom the account 4th July applies, entered to the inn of that date.

The

Answer.

The pursuers are at pains to shew that the dates in the household-books are exact; that they must be so, on account of the many checks to which they are subject; that, when they differ from those of the police-book, the last, and not the first, are erroneous; and that, in fundry of the instances pointed out by the defender, the entries in the police-book, though prior in date, are clearly subsequent to the account's being opened in the household-book. On this head, the pursuers further take it upon them to aver, that, in the course of the whole three years to which the defender's Excerpts relate, there is *not one just instance* of an erroneous date of entry in the household-books.

Reply.

The defender does still say, that, from the appearance of the books themselves, many persons have been in the house, and inscribed in the police-book, several days before having any account opened in the household-book: And further he does aver, that, notwithstanding the various checks figured by the pursuers, there are *many undoubted instances* of errors in the dates affixed to the household-books.

The account of Mr. Dejardine in the household-book page 31, begins on Wednesday the 20th June 1747, and is followed by articles dated the 21th, 22d, 23d, and 26th; yet there is an evident mistake in this date, as Wednesday was the 21st, and not the 20th June 1747. Mr. ——— is marked on the same page, as having entered to supper on Thursday the 5th May, and articles are stated to him of that day and the next; but in fact Thursday was the 4th, and not the 5th May. Mr. Perier, Mad. son epouse, une femme de chambre, et un garçon, are marked on the preceeding page as having also entered on Thursday the 5th May, and articles are stated to them even down to the 17th; yet, this date must be wrong, as Thursday was not the 5th of May 1747.

The blank gentleman, said by the pursuers to be Mr. Loras, is marked in the household-book page 22, as having entered on Friday the 7th March 1747; the fact is that Friday was the 10th, and not the 7th.

Mr. de Vilers appears from the household-book, page 51, to have entered on Tuesday 6th December 1747, and there are articles stated to him day by day for a week; at the same time there must have been a mistake in the date, as Tuesday was the 5th, and not the 6th.

Mr. Monfon is said by the household-book, page 63, to have entered on the 28th March at supper, and, in drawing out his account, four days are stated to him in March; and, had he entered before dinner upon the 28th, this charge would have been just; but there are not four days in March after the evening of the 28th, and therefore there is a mistake either in the charge or date of entry.

Mr. de la Mothe is said in the household-book, page 69, to have entered on Thursday 17th July 1748; in fact Wednesday was the 17th July.

Mr. Blondel is entered, according to the household-book, page 30, on Thursday the 29th 1749, which, from the articles that follow, must mean

mean Thursday the 29th June, and so it is stated in the pursuers Excerpts, No. 250; at the same time the 29th June 1749 happened on Sunday, and not on Thursday.

The above are some specimens of the errors in date which occur in the household-books; and there are several others in the same situation, which it would be tedious to enumerate. From those which have been given, your Lordships will judge how far the pursuers are entitled to assert, that, in the whole period of the Excerpts, there is not *one instance* of an erroneous date in the household-books.

The pursuers talk much of the interest Godfroi had to keep his household-books exact, and that it was less material for him to be punctual in the dates of his police-book. In fact, however, he was liable to a fine of 300 livres, by the laws of police, for every mistake committed in the police-book, and he was liable in no fine for the irregularities of his household-book. At the same time, the defender does admit, that Mr. Godfroi appears frequently to have neglected inserting his guests in the police-book, till a day, or perhaps several days, after their arrival; and, for that reason, there are many instances of persons wrote in this book, of dates posterior to their real entry; but it is impossible to give any good reason for their appearing in the police-book prior to their entry, nor does any such thing ever happen. One of two things, therefore, is undeniably certain, either that all those persons who appear entered in the police-book, of dates prior to the dates of the accounts opened for them in the household-book, who are marked Number 2d, in the Excerpts for the defender, have been in the inn for some time before any accounts were opened for them; or that the entries in the police-book have been antedated. The defender takes the first to be the most probable supposition; the pursuers, on the other hand, maintain the last to have been the case, but without any evidence.

It cannot be taken on the assertion of the pursuers, that the household-books are exact, and the police-books irregular; more especially, as they themselves once asserted the contrary of this position. Mr. Godfroi's hand-writing in the police-book is just as good evidence as his hand-writing in the other book; and your Lordships cannot believe, without evidence, that he and the police-officers combined together in counter-acting the laws of police, by affixing erroneous dates without the least necessity.

With regard to the instance of Mr. Sarrazin, who, is entered in the police-book before the 7th July 1747, whereas his account is Purs. Exc. N. 51. only opened on the 25th of that month; the pursuers are pleased to suppose, that the four visas, of dates 7th, 13th, 20th, and 28th July, were subjoined by the inspector at one and the same time, in order to conceal his negligence, and that Mr. Sarrazin may have

entered any time before the 28th July. This conjecture, however, is of a very extraordinary kind, and altogether destitute of probability.

In the first place, the marks by the inspector of the 7th, 13th, 20th, and 28th July, do not appear to have been all wrote at the same time. 2dly, They are wrote in the same hand with those of the 1st, 7th, and 14th August following, and those in May and June preceeding, which are certainly of a different date; and the whole of these may as well be said to have been wrote at the same time. No court will presume that a publick officer would be guilty of such negligence in the execution of his office, or of such fallhood, in order to conceal it.

The pursuers say, that the *certainty* of his not having entered to the 25th July, is confirmed by a subsequent article in the account, in which he is charged for seven days only in July. But this is, in effect, proving *idem per idem*. His account, in the book, begins no earlier than the 25th July, so that no more than seven days of July could be charged in that account. But, if the person to whom it belongs, was in the house at a prior period, or of an earlier date, without any account in the book, which, from his entry in the police-book, appears to have been the case, he must have been charged, for that prior period, in some other shape. And that he was in the inn prior to the 25th, when his account is opened in the household-book, is *certain* from the first article of his account, being 30 sols for a dinner on the 24th, which must have been omitted in the account then paid by him. A person, or company, may have been in the house for days together, before beginning to live at the ordinary, or may first have been charged from memory, or separate accounts, and afterwards, from an account opened in the book, something of this kind must have happened in this and all the instances where persons appear to have been in the house at first without any account, and afterwards, with an account opened for them in the household-books.

Purs. Exc.
N. 61.

The next instance mentioned is that of Mr. Vavray, who is entered in the police-book on the 19th August, and in the household-book on the 21st; and for which variation, the pursuers endeavour to account in the same manner by the two visas on the 19th and 23d August. The improbability of this conjecture has already been noticed in a similar case. It is only further necessary to observe, that Mr. Vavray's name is entered in the police-book with Madame Godfroi's hand; and the supposition of the pursuers, that the date prefixed to that entry was wrote not by her, but by the inspector, is quite unnatural; for when the inspector came to make his visit, it was unnecessary for him to prefix a date to the article, nor was it ever his custom so to do; it was enough for him to mark the date of his visa, which would of course presume, that Mr. Vavray had been in the hotel before that date. Accordingly the date of the visa is marked, viz. the 19th August,

gust, and there was not the least occasion to commit so gross a falsehood as to prefix the same date to Vavray's name, if, in fact, he did not enter of that date. If, indeed, Madame Godfroi had marked down Vavray as arrived on the 21st, and the inspector had thought it proper to draw back his visa to an earlier period, this might have induced him to alter the date; but as no date at all was prefixed to the article, he had not the least occasion to fill up one; besides, it does not occur what reason there could be to antedate the visa in this case, supposing the inspector to have visited the hotel on the 14th, and afterwards on the 22d, as the distance between these two visits is no greater than appears between many others in the book. But it is pretty certain from the book, that this visit was made upon the 19th July, as the next is of date the 23d July, and has clearly been wrote at a different time. It is not very probable he would have visited the hotel the 22d July, and not marked the book of that date, and returned back to it again the next day, and visited it of-new.

The next instance, Mr. Menezet, depends upon the formation of a Purs. Exc. figure, whether it was intended for the 1st of August or the 4th of Au- N. 53. gust. Both parties were once agreed, that this figure was the 1st, and not the 4th; and after the most narrow inspection that the defender can possibly give it, he still apprehends it to be the 1st, and not the 4th, though the pursuers are now of a different opinion.

The pursuers, in the next place, state eleven instances in the lump, p. 78. and endeavour to reconcile them. The general argument used for this purpose is, that the dates of the police-book must be erroneous; but this argument, or rather assertion, has already been spoke to. It is to be observed, that the whole eleven instances are wrote into the police-book by Mr. and Madame Godfroi themselves, and not one of them by the inspector; so that the mistake is the less to be presumed. As to the case of Coquebert and de Perth, why should Madame Godfroi, after a visa of the 28th, have stated their entry as on the 10th, if this last had not been the real date of entry? On other occasions the pursuers say, that the date of entry is postponed till after the visa of the inspector; and that in writing down the names of lodgers in the police-book, Godfroi and his wife could not draw back the entry further than the last visa. The accounts of Dampiere and Duhamel are opened in the house-book by Madame Godfroi, who did not know their names; but these gentlemens names are entered in the police-book by Mr. Godfroi, who likewise fills them up, *ex post facto*, in the household-books; so that this instance only shows, that Godfroi knew their names, and that his wife did not; and it shows, at the same time, how careful they were in filling up names in the blank accounts.

Upon a fair discussion, therefore, of these instances, it is manifest, that the defender's supposition, with regard to them, is founded on the

the evidence of the books, and that the assertion of the pursuers is contrary to that evidence.

THIRD OBSERVATION.

Answer.

The tendency of the third observation was to show, that the anonymous company, to whom the account 4th July 1748 belonged, were not singular in the circumstance of wanting servants, and that, after all, they may have had hired servants, or valets de place.

The pursuers, in their answer, admit a great number of instances of persons and companies, in the situation mentioned by the defender ; but, in general, they say, that companies, consisting of two or more persons, especially females, or persons of consideration, appear generally to have been attended with servants, and that it is still a circumstance of correspondence between Sir John and the blank account, that neither he nor the anonymous company had any servants.

Reply.

The pursuers have here only answered one half of the observation, and omitted the most material part of it, *viz.* that there is not the smallest evidence that the anonymous company, though they might come to Paris without servants, had not servants attending them while there ; for nothing is more common than for persons of all ranks to travel to Paris, or to any town, by post, without carrying servants with them, and to hire them, while there, upon day-wages, in which case, the books of the hotel, or inn, cannot show whether they had servants or not. Neither does it appear whether the anonymous company were persons of consideration, or what was their rank, sex, or quality.

Six instances are admitted, of companies of three persons wanting servants, and there are twenty-seven instances of companies of two persons in the same situation, several of them consisting of women, or of persons of both sexes. The six instances of three persons bear very near the same proportion to the whole companies of that number, that the twenty-seven instances of two persons bear to the whole number of such companies.

FOURTH OBSERVATION.

The defender's next observation, in substance, bears, that though many instances occur, of persons paying their bill and recommencing, yet, from beginning to end of the book, no instance can be shown of an account being opened blank, and that account closed, and opened again with the words, " Mr. a payé et recommencé," after the person's name was known to Godfroi or his wife, without the name being filled up ; consequently, as Sir John's name was certainly known on the 7th July, this is an additional circumstance to show, that

that the blank account, beginning 4th July, closed on the 8th, and again opened, but still left blank, does not apply to Sir John Stewart.

The answer made is, in the first place, that the article relative to Sir John, in the police-book, may have been wrote on the 11th, and ante-dated or brought back to the 7th. 2dly, That the expression, " Mr. a payé et recommencé," is compleat of itself, and requires no insertion of the name. 3dly, That the instances appealed to are few in number, and contradicted by other instances. And 4thly, That there is a latent fallacy in the argument.

The first answer is perfectly chimerical, and contrary to evidence; Sir John's name is wrote in the police-book, not by the inspector, but by Madame Godfroi herself, with the date prefixed to it, also in her hand-writing; and from the difference of ink, it is plain, that this article has been wrote at one time, and the inspector's visa of the 11th at another time.——It is absurd to imagine, that Madame Godfroi should have wrote this article on the 11th, or on the 9th, or 10th, and at the same time have given it the date of the 7th. Whatever motives the inspector may have had for ante-dating, Madame Godfroi could have none; and if she was at all to ante-date, she ought rather to have gone back to the date of the entry, viz. the 4th, as was done in the case of Coquebert, and du Perthe, and many others.

The dates affixed to the entries in the police-book by Godfroi and his wife, are all undoubtedly either the dates of arrival, or the dates of writing the entries, and the instance above mentioned of Coquebert, and du Perthe, shows, that no regard was paid by them to dates of former visas; and there are others in the same situation. It is clear therefore, that Madame Godfroi wrote the article concerning Mr. Stewart of the date which it bears, viz. the 7th.

The second answer proceeds upon a misapprehension of the argument. The defender does not say, that Madame Godfroi ought to have inserted the name in the recommencement; but he says, that in writing this recommencement, she must have seen with her eyes, that the Mr. concerning whom she was writing, was left blank in the beginning of the account, and she would have filled up that blank according to her usual practice, had she not been still ignorant of the name.

3dly, With regard to instances, the whole that were pointed out by the defender, being seven in number, are admitted, and these are sufficient for the purpose. One instance is given by the pursuers, of two persons whose names were left blank, though they appeared to have gone away for a day and returned again, and were in whole two days and a half in the house. But supposing the blank account

to apply to these two persons, of which there is no evidence, it is to be observed, that the names in the police-book are wrote in a different hand from that of Godfroi or his wife, probably by one of the lodgers themselves, after their return to the hotel on the 27th, and after the account was first opened blank, and after the recommencement was also wrote, so that it does not appear, that Godfroi, or his wife, knew their names, when he wrote either the beginning, or recommencement of the account; and, besides, they were so short a time in the house, and so few articles stated to them, that though an escape should appear to have happened in this single instance, it would not be material.

Lastly, as to the supposed fallacy in the argument. It is very true, that the defender does not admit of the application of blank articles, but this does not render his argument fallacious, it is incumbent on the pursuers to prove their assertions with regard to these articles, in some other way than by mere conjecture, and as they had access to the books from the beginning, they were much better enabled to bring proofs of this kind than the defender.

F I F T H O B S E R V A T I O N .

The fifth observation relates to the case of officers. The pursuers had insisted, and Godfroi's oath seemed to import, that he was more careful in marking the entry of officers and foreigners in his police-book, than any other persons, and the defender thought it proper to show, by excerpts from the book, that this was not so.

Answer.

The pursuers in their answers deny, that it is of the smallest consequence to their argument, whether Godfroi was exact or not in this particular; and further they say, that upon a minute investigation of the books, he appears in fact, to have been more accurate as to officers.

Reply.

In reply to the first part of this answer, the defender must take the liberty of referring the pursuers to p. 44, 45, and 46, of their own observations, where they lay great weight on this supposed distinction, between officers and other people, in accounting for the six confessed instances of persons in the police, without being in the household-books, and they insist, that by the regulations and practice of police, the innkeepers are required to be very strict and attentive with regard to officers; so that it is not altogether proper in them, first to insist in the distinction, and to lay weight on it in one of the most material arguments of their cause, and then to tell your Lordships, when obliged to defend the reality of it, "that the pursuers argument does not stand in need of this fact in any one part of the cause;" and, again, "that it is of no manner of consequence to the pursuers, whether
" greater

Purs. Exc.
p. 79.
p. 82.

“ greater exactness was observed in the police-book with regard to officers, than other lodgers, or not.” Neither is it true, that there is any regulation of police, enjoining innkeepers to be more exact in marking officers than others, the regulations of police are general with respect to all lodgers.

To the second part of the answer, it is replied, that fifteen instances of inaccuracies with regard to officers, being admitted by the pursuers, this is sufficient for the defender’s argument, without entering into any scrutiny about the matter; for, so far as appears from the books, there were only about fifty officers in Godfroi’s during the whole three years, and fifteen instances bear a considerable proportion to the total number. It is to be observed also, that no notice is here taken by the pursuers, of the instances of officers not entered in the police-book at all, though in the household-books.

SIXTH OBSERVATION.

The tendency of this observation was to show, that the blank account 4th July, had nothing either in the beginning, progress, or conclusion of it, that seemed to point out women to have been of the company, and that another instance could not be pointed out of an account applying to women, where the account itself did not specially mention them, or something relative to them. This observation was illustrated by examples.

In answer to this, the pursuers say, that the observation may be re- Answer.
torted, for that an instance cannot be pointed out, of an account applying to men, where the account itself does not show the application; that the word *Mr.* being used in the close of the account, shows, that one man paid for the whole; and that the demand made by the defender, of pointing out an account belonging to women, without some mention or description of them, contains a fallacy in it, similar to that above noticed, though, at the same time, an instance of this kind is endeavoured to be made out.

Notwithstanding this answer, the defender’s general proposition re- Reply.
mains undoubted, that the account in question, does not, from the beginning to end, contain one circumstance or vestige of women being in the company, and, consequently, there is nothing in the account itself which denotes, that it applied to Sir John Stewart, Lady Jane Douglas, and Mrs. Hewit. At the same time, the defender has pointed out various accounts opened in the same manner, *Mr. ——— font entré*, which undoubtedly belonged to men, and he has pointed out a variety of accounts belonging to women, which, though blank in their names, contain some expression, or article, descriptive of the sex. The concluding words, *Mr. a paye*, were natural and proper, whether the account belonged solely to men, or to men and women in company,

company, because this was only ending the account in the same way it began, of which fundry other instances appear, and the common case is for one person to pay for all, more especially if the company happens to be in a family way; for example, a father and sons, an uncle and nephews, two or more brothers, or even where they are no other way connected, than by travelling or living in company together.

It is very true, that if an account is not only blank in the names, but contains no circumstance or expression, denoting whether the company is male or female, it is impossible, without extrinsic proof, to say, whether they were of the one sex or the other; but still the defender's proposition is good, that the account in question did not probably belong to women, because it certainly applies to one man at least, and it contains no circumstance descriptive of women; whereas, a great variety of accounts have been excerpted from the books, which point out women to have been in the company, though in several instances their names and designations are unknown. The instance of an account beginning with the letter M, makes neither the one way nor the other. The letter M could not surely determine whether it belonged to men or women; but the addition of *une femme de chambre*, leads the pursuers to think, that the account belonged to ladies, and very possibly they may be right in their conjecture. At the same time, this very circumstance which seems to denote a female company, points out a difference between that case and the present, as no circumstance of any kind, descriptive of women, occurs in the blank account 4th July. Neither is this circumstance of the *femme de chambre* quite conclusive, for a male company may happen to be attended by a female servant, or a female company by a male servant; for example, in the household-book, 7th March 1747, an account is opened thus: Mr. ——— et *une demoiselle*, if this person had not been described Mr. in the household-book, the pursuers would have insisted that he was a woman; another example of this kind appears from the book in April 1752, page 168, where there is an account opened in this manner: *Monieur ——— est entré à souper une gouvernante, deux domestiques, et quatre cheveaux*. If *Monieur*, in this case, had not been wrote at length, the pursuers would have converted him into a lady, upon account of the *gouvernante*.

The pursuers conclude their observations on this head with a remark, which they seem particularly fond of, to wit, that as Mr. Godfroi was not informed, by Mr. Mailfer's letter, of the designations of the two ladies, nor that Lady Jane was the wife of the Scots Colonel, so, in opening their account, he could make no mention of the ladies, either by their names or designations; and therefore the defender was in

in a mistake in supposing that they might have described them, " Mr. ——— Mad. son epouse, et une dame, de compagnie ;" and they insinuate as if Lady Jane's being the wife of Sir John was kept a dead secret upon their arrival at Godfroi's.

In conceiving the last part of this idea, the pursuers have totally forgot that Madame Godfroi, with her own hand, wrote in the police-book on the 7th July, " Mr. Stuuart, gentilhome Ecoffois, et Mad. " son epouse : " From which it is clear that Madame Godfroi, at least as early as the 7th July, not only knew the name of the Scots colonel, but knew that one of the ladies in company with him was his wife. It is no less clear, that, long before the 7th July, she must have seen whether Mrs. Hewit was in the stile of a female companion, i. e. une dame de compagnie, or a femme de chambre. If she was entertained at the same table, she was une dame de compagnie ; if otherways, she was a femme de chambre : So that Madame Godfroi must have been very soon apprized of the designation and quality of Mrs. Hewit, as she certainly was of Lady Jane's. This, therefore, could be no reason for omitting Mrs. Hewit in the police-book ; far less could it be the reason of leaving their account in the household-book blank, during the whole time of their residence.

But, in the next place, let it be supposed, that Madame Godfroi had remained for some days ignorant both of the name of Sir John Stewart, and of the designations and qualities of the two ladies ; and that she thought it necessary to open an account for them, before she knew any thing further than what appeared from the letter of Mr. Mailfer, yet the defender's argument would still hold good ; and the entry relative to them in the household-book, ought to have made mention of the ladies. It is true Madame Godfroi would not have used the expression " Mad. son epouse ;" but what then ? Did not she see, from Mr. Mailfer's letter, that the company was described in this manner, " un colonel Ecoffois, avec deux dames ? " How therefore came she not to use this description, if she opened an account for them in her books ? Had she begun an account for them in this manner ; " Mr. ———, colonel Ecoffois, avec deux dames font entré," this would have been in terms of the description given in Mailfer's letter ; it would have been agreeable to the true fact, and it would have been according to the universal practice of the house, demonstrated by a number of instances, subjoined in the Appendix to the defender's Memorial, No. 12.

Some of these instances are as follow : " 7th Mars 1747, Mr. ———
 " est entré à soupée, et une demoiselle. 19th May 1747, Mademoi-
 " felle de Lomel est entré à soupée, et une fille. 11th May 1747,
 " Mad. ——— font entrés à soupée, et une femme de chambre. 27th

L

" Juillet,

“ Juillet 1750, Mademoiselle ——— est entré à diné, et une femme de
 “ chambre, et un domestique. 19th Avril 1751, Monf. et Mad.
 “ sont entrés à diné. 25th Avril 1753, Monf. Berthelin est entré à
 “ soupée, deux demoiselles, et une femme de chambre; cinq jours et
 “ demi pour Monf. cinq jours et demi pour ces demoiselles et la femme
 “ de chambre.”

S E V E N T H O B S E R V A T I O N.

The next proposition maintained by the defender was, that above one hundred and eighty instances appeared of accounts or entries in the household-books, many of them for companies of three or more persons, and who staid above ten days in the inn, for which there were no corresponding entries in the police-book; consequently, that the want of a corresponding entry in the police-book, for the anonymous company in July 1748, was of no manner of importance in the argument.

Answer.

In answer to this, the pursuers, in the first place, argue in general, that the omissions in the police-book are of no consequence, as their cause depends, not on the accuracy of the police-books, but on the exactness of the household-books; though at the same time they say, that it is extraordinary that Sir John Stewart should be in the police-book, without a corresponding account in the household-book, while another company of the same number, and who were in the house at the same time, were entered in the household-book, without being in the police-book; and that it is by combining the evidence resulting from both books, that the real force of it is to be estimated. 2dly, They dispute some of the instances appealed to by the defender on this head.

Reply.

In reply to the general argument, which is not perfectly consistent with itself, the defender does submit to your Lordships, that the junction of two inconclusive circumstances cannot render them conclusive. The defender has already shown, that many instances occur, of persons and companies entered in the police-book of Godfroi, and lodging in his house, without having any account opened for them in the household-books, so far as any discovery of these books has been made; six of these instances are admitted by the pursuers during the period of the Excerpts, and many more are clear, though not admitted by them. He has also pointed out in the Excerpts relative to this observation, a great variety of instances of accounts opened for persons who are not in the police-book; and though some of these are disputed, yet about one hundred and fifteen are agreed to on all hands, which are sufficient for the purpose. Further, he

he has mentioned, in the beginning of this paper, various instances where it has happened, at one and the same time, that one person or company is marked in the police-book, without an entry in the household-books ; and a different person or company, has an account in the household-books, without any relative entry in the police-book. The inference, therefore, is plain, in the first place, that Sir John Stewart's being marked in the police-book of date 7th July 1748, without having an account in the household-book, is an inconclusive circumstance. 2dly, That a company's being entered in the household-books of date 4th July, without a corresponding article in the police-book, is also inconclusive. And, 3dly, That both of these circumstances taken together, let them be combined, or turned into whatever shape the pursuers think proper, can never, in the nature of things, amount to the most slender evidence that Sir John Stewart was the person to whom the blank account belonged, and that he and his company remained in Godfroi's house from their arrival to the 14th of July.

The pursuers say, it is very wonderful that this blank account should be applied to a nameless company, and not to Sir John Stewart, when it is certain Sir John was at that time in the inn ; and there is no evidence with regard to the other supposed company. The meaning of this is, that it is wonderful that the other company should not have been in the police-book ; for no other evidence, with regard to them, could be looked for, except the entry of their names in the police-book. But this is a wonder which the defender maintains has happened above a hundred and eighty times in the period of the Excerpts, and which the pursuers admit to have happened a hundred and fifteen times. There are also many instances to be found in the household-books, of different persons and companies arriving at the same time at the inn, some of whom are entered in the police-book, and others not. Thus Mr. Brodard arrived at the inn the 7th March 1747, and is in both police and household books of that date ; and two different companies arrived at the house on the same day, neither of whom are entered in the police-book, defender's Excerpts, page 96.—The same thing occurs in p. 97,—20th March, where Mr. Badowin is said to have arrived at the inn on that date, and is thereafter entered in the police-book ; but another person, who arrived at the inn that same day, and whose account is opened in the household-book, is altogether omitted.—Again, on the 19th May Mr. Coples arrived at the inn, has an account opened for him, and is thereafter entered in the police-book ;—and Mademoiselle de Lomel arrived at the same time in the inn, staid just as long as Coples, which was ten days, and yet is in no police-book.

book.—The same thing occurs twice in p. 100, being the 3d July and 3d August;—p. 102 17th September, and 10th October, p. 103;—18th October, p. 110;—27th July, and 4th August, 1748, p. 111;—17th August, and p. 118, 7th October. And there are several others in the same situation. So that every circumstance contended for by the defender, however wonderful it may appear to the pursuers, is supported by many similar instances from the books; and their hypothesis, on the other hand, is founded on mere inconclusive reasoning and conjecture.

From the defender's Excerpts it appears, that between the 20th March and the end of September 1748, there were 59 accounts opened in the household-books for which no relative entries are to be found in the police-book; six only of these, including the blank account 4th July, are pretended, from *circumstances*, to be applied. The remaining 53 are admitted by the pursuers to be without application. Supposing therefore they should be wrong in their conjecture as to the account 4th July, it will only be in the same situation with 53 others who have clearly no relative entries in the course of these six months.

With regard to the particular instances of persons in the household-books, without being marked in the police-book, the defender's assertion was, that there were 180 instances of this kind, more than three-fourths of which would be admitted by the pursuers: and in fact, upon a comparison of the Excerpts, this turns out to be the case. The list indeed given by the pursuers from p. 48 to p. 56, contains in appearance only 115 instances, but in reality it admits 147; for, in order to diminish the apparent number of them, the pursuers have in fundry instances included two, three, or four under one; for example, the 4th that occurs in the list is stated in this manner: "27th March 1747, " Mr. de la Buthotrie est entré a soupée, (staid till 31st March).—11th " August 1747, Monf. Buhterie à soupée.—23d March 1748, Mr. de la " Buotrie a soupée." These three entries or articles are all mentioned as one, which is perfectly erroneous, as it is plain that Mr. Buthotrie or Buhterie, or Buotrie, (supposing these names all to belong to the same person) was at three different periods in the house, to wit, first in March 1747, afterwards in August that year, and a third time in May 1748; so that he ought to have been three times marked in the police-book corresponding to these three entries; and as he has been omitted all the three times, this undoubtedly makes three instances in the list, though the pursuers have only stated them as one.

Purf. Exc.
p. 48.

The same thing appears in a variety of other instances, which it would be tedious to insert. The above will serve as a specimen, and P. 49, N. 318. it shall only be further noticed, that in the case of Mr. Jaron they have

have squeezed no less than six instances into one: and in the case of one Caron, (Purf. Exc. p. 30. N. 215) who is entered in the police-book 12th April 1749, they state an account corresponding to him in the separate household-book, and there mention six other accounts which were opened for him at different times in the course of that year, though these other accounts have no connexion with the entry in the police-book. These errors therefore being rectified, the number of undoubted instances, which, in effect, though not apparently, are admitted by the pursuers, amount to one hundred and fifty-three.

Another thing which occasions a difference between the two lists is, that the pursuers strike out the whole twenty-two instances of blank accounts, which by conjecture they apply to *nominatim* entries in the police-book: it depends however on a consideration of the reasons above stated with regard to these articles, whether they fall to be included in the one list or the other. The defender has endeavoured to show, that the conjectural applications made by the pursuers cannot be admitted, and consequently, that these articles must be stated in his list of accounts in the household books, without any relative entries in the police-book.

The fourteen disputed articles which the pursuers pretend to apply by name to entries in the police-book, are in the same situation: and all these together raise the number to above 180.*

The pursuers accuse the defender of inaccuracy, in saying, that many of the accounts and entries, which have no corresponding articles in the police-book, were for companies of three or more persons, and who staid above ten days in the inn. This, say they, is a mistake; for during the course of the whole three years there are but seven instances relating to companies of three or more persons entered in the household-book, without corresponding entries in the other book; and in not one of these instances did the persons reside ten days. But upon inspection of the third column of the defender's Excerpts, and the pursuers Excerpts, p. 48, &c. your Lordships will see that the pursuers are mistaken; for there are fourteen instances of companies, which consist of three persons, who are not entered in the police-book; some of them staid more than ten days in the house, such as Mr. de Villette and his nephews, who staid 19 days, Mr. and Madame Perier, and their femme de chambre, who staid eleven days; several others who staid eight days, some seven days, and others shorter. Of this number indeed the account pretended to apply to Mr. Loras, who is entered in the police-book, makes one, but which application is denied by the defender. The rest are all stated in the pursuers

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* N. B. Upon further inspection of the books, it is perfectly clear, that Moncombe and de la Combe, (the last of the fourteen instances, No. 299) though pretended to be the same person by the pursuers, were different. In page 24, household-book, of date the 16th June 1749, there is an account for Mr. Coqueray de Combles, which is continued in page 33, in this manner: *M. de Moncombe d'autre part d'ait*, &c. and ends the 4th July. — In page 26, of date the 27th May 1749, Mr. de la Combe, avocat du roi de Nimours, and sundry other persons with him are entered, and stays to the 2d June, so that, as both the names and designations of these two gentlemen were different, and both were in the house within a fortnight of each other, they cannot possibly be the same person.

list of persons who are not entered in the police-book. And the pursuers are further mistaken in their assertion, that the far greatest part of the accounts in this situation are relative to customers who often frequented the house, or to persons who made a short stay. From inspections of the said third column your Lordships will be satisfied, that no distinction of this kind was observed.

E I G H T H O B S E R V A T I O N

Sets forth in substance, That as both the police-book and the household-books are defective, it is impossible, from all the books taken together, to determine what number of guests, or what particular persons were in the house at any given time; and that there must have been many more lodgers in the house in July 1748, and at other times, than can be discovered from the books; at least, if Godfroi and his wife have sworn truly, that their house was generally full from the beginning of the year to the end of it, which indeed appears to have been the case in July 1748; as Sir John and his company are said to have been lodged in one of the worst apartments of the house, viz. in a second floor above that which is at present the remise or coach-house, on account of the other apartments being full.

Answer.

The pursuers confine their answer to the last part of this observation, and entertain your Lordships with a critical dissertation on that part of Godfroi's oath, where he says, "he *believes* that there were at that time a great many people lodged at his house, because he gave to these strangers a lodging only in the second story over that which is at present the remise or coach-house of his hotel." This, say they, does not imply that the house was really full, but is only a *conjecture* of Mr. Godfroi's, that it may have been full; and they assign two reasons for Sir John's *choosing* to lodge on the second floor; first, because an apartment on the second floor was in that hotel, as in all the other hotels in Paris, *much cheaper* than on the first floor. 2dly, That it was further removed from the noise of the streets; and they observe, that in Michelle's house Sir John and his company were lodged on the second floor.

Reply.

This answer is remarkable in fundry particulars, which merit the attention of your Lordships. In the first place, the pursuers affirm, that Godfroi's deposition, in this instance, is mere conjecture, though he swears that he *believes* so and so. 2dly, They assert positively, that the lodgings on the second floor of this hotel, were cheaper than those on the first. This fact, which was till now unknown to the defender, they must have had from the private information of their friend Godfroi; and, if the fact be true, the defender desires to know, where are the accounts for those lodging on the first floor. The household-book, of which a copy is produced, charges every person, without distinction,

tion, at the rate of three livres a day, as the ordinary of the house, for eating and lodging. Let the pursuers explain, whether this is the book of the first floor or of the second floor. In all probability it must have been the book of the first floor, as Godfroi explains the separate book, also produced, to contain only the accounts of those who were entertained below the ordinary, and of such as only eat, but did not lodge in the house. Sir John, therefore, and his company, who *chose* the second floor, on account of *cheapness*, ought to have had their account opened in the separate book, and not in the principal one, if any account was at all to be opened for them, and the blank account, 4th July, in the principal book, cannot apply to them.

If, on the other hand, the book, hitherto supposed to be the principal one, was only the book of the second floor, and, if persons of rank and figure, who lodged on the first floor, were entertained at a higher rate than the ordinary, which is extremely probable, it follows of necessary consequence, that there must have been some other way of accounting with them, or a third book, which is now suppressed, and which, may have contained Sir John Stewart's account, who was recommended to Godfroi as a person of some consideration, though, from the fulness of the house, he is said to have been lodged in the second floor. This is at least a circumstance which requires to be explained. The defender remained in ignorance till now, that any distinction was made in Godfroi's hotel between the first and second floors ; but he takes it for granted, that such was the fact, as it is so positively asserted by the pursuers ; and the consequence is plain, that a material part of the evidence is wanting, *viz.* either the book for the first floor, or the book for the second floor.

One part of the fact, however, is not properly stated by the pursuers. Godfroi's house consists of a square court, the front of which is only to the street. The rooms are situated all round the court, and there are not above three of the first floor-rooms to the street. The first floor-rooms in the other three sides of the square, are just as quiet and free from noise as those in the second floor. As to Sir John and Lady Jane's lodging in a second floor in Michelle's, in the first place, the rooms in that house are much better and cleaner than those in Godfroi's, which, like all the other inns or publick houses in Paris, is remarkably dirty, and very inconvenient, whereas Michelle's, which is an hotel garnie, where no table d'hote is kept, nor wine sold, is entirely on a different footing. The second floor in Michelle's, though not a first rate hotel, is far preferable to the first floor in Godfroi's. 2dly, It is proved, by the evidence of the Michelle family, that the apartment hired by Sir John, was the only one empty at the time, so that they were obliged to take it, or go to another house. At the same time, it is to be observed,

observed, that their expence of living, on the whole, at Michelle's, was much higher than the ordinary at Godfroi's.

It is only further to be noticed on this head, that, though one or two specimens may be given from the books, during the whole course of the three years, of ten or eleven persons, appearing from these books to lodge at one and the same time at the hotel, yet the general proposition remains certain, that, to judge from the books, this hotel, in place of being generally full, in so much that an addition of ten rooms, and as many closets became necessary, was never at any one time full, and in general must have been very ill frequented, and that, for the most part, the number of lodgers did not exceed above four. It is also certain, that, at the particular period of the 4th July 1748, the utmost number that can be made out from the books is two, besides the anonymous company, viz. Monf. Ressette and Monf. Descourbons, (excluding Monf. Maigret, who appears to have been an eater, and not a lodger,) notwithstanding Godfroi's swearing that he believed the house was full, and the *causa scientiæ* given by him.

N I N T H O B S E R V A T I O N.

Under this head, the defender offered some reasons for believing, that the household-book, of which a copy is produced, was merely the book of the ordinary, and that Sir John Stewart, if entertained, as English people generally are, would not fall to have any account in this book, but would be charged in a quite different manner; and some instances were mentioned of separate accounts kept by Godfroi, which had been accidentally discovered.

Answer.

The pursuers say, that this proceeds upon a supposition, that, on the evening of their arrival, Sir John gave intimation to Godfroi, that he chose better fare, and to be entertained at a higher price than the other lodgers in the house, a thing inconsistent with his alledged poverty at the time; and besides, that the defender was in a mistake in supposing the book in question to contain only accounts at the ordinary of the house, for that, in fact, many articles of extraordinary furnishings, both for eating and drinking, appeared in this book.

Reply.

There is no occasion to suppose any formal intimation, made by Sir John upon his arrival, that he chose to live well, and to be charged extravagantly. He was recommended by the first Magistrate of Reims, whose letter bore that he was a stranger, a colonel, and attended with two ladies; this was a sufficient intimation to Godfroi, that they were persons of some rank, and, as they entered in the evening before supper, the question would naturally be put to them, Do you chuse to sup at the table d'hôte? The fact is certain, that they did not eat at

at the table d'hote, or ordinary, but were entertained in their own apartment. They would, in the next place, in course, be asked what they chose for supper? and, unless they expressly bargained that they were to be served with the dishes of the table d'hote, though they refused to go to that table, a thing highly improbable, they would, no doubt, be charged for such articles as they called for, without regard to the prices or fare of the table d'hote. But the pursuers are pleased to form this most unnatural supposition, that, in place of bespeaking their own supper, they chose to put up with the ordinary food, prepared for the table d'hote, of a French inn, when, at the same time, they did not go to the table d'hote, but were entertained in their own apartment. Their poverty was not such as to make it necessary for them to starve, or to eat of dishes which to them would be most disgusting and disagreeable, more especially, as they had a credit in their pockets for money, which they received in Paris; and the additional expence could not be great, supposing them to have bespoke their own dishes, rather than put up with the ordinary fare of the table d'hote. If they chose the latter, it was probably the first and the only instance of such a thing having ever happened to an English company in Paris, consisting of a gentleman and two ladies, and eating in their own apartment.

That the book in question was merely a book for the ordinary of the house, seems clear from every page of it; and the accounts appealed to, where extraordinary articles are said to have been furnished, are no proof whatever of the contrary. There is not one account in the books which has not been opened for persons who entered to live at the ordinary, though on particular occasions, and at a particular meal, they have called for something better, or something different from the ordinary.

The case of Mr. Bidet, N. 30 and 31 of the pursuers Excerpts, is no instance of a person living above the ordinary. He, and his son and a servant entered to the house on the 19th April 1747, and had his account opened for him in the ordinary stile. On the 22d of that month, he began to drink his own wine to supper. On the 26th he gave an entertainment to some friends, which is stated to his account; but this is quite agreeable to the argument maintained by the defender; he entered, and was entertained at the ordinary of the house, as appears from sundry of the articles, particularly from an article in the account, wherein he is charged with dinner to two of his friends, without wine, 2 liv. 8 sols, which was the price of the ordinary, after deducing 12 sols as the price of the ordinary wine; but when, at a particular time, he had occasion to call for a meal better than the ordinary he was charged with it, a thing which must necessarily happen to every person living at the table d'hote, or ordinary of an inn, if he ever calls for any thing extraordinary.

At the same time, this account is so full of blunders, that it is difficult to understand it. The month of August is mentioned in place of April; the son is only stated 1 livre 4 sols for eleven days, and the sum total at the foot of the account is considerably less than the different articles amount to.

In like manner, it is observed, that extraordinary articles were furnished to Du Bois, N. 37; but this man clearly entered, and is charged at the ordinary of the inn, and any extraordinary article furnished to him was in wine, of which there are instances in almost every account in the book.

In the same way Mr. Duvaudier is charged with extraordinary articles of mackarel and soals, and an entertainment, at a particular time, above the ordinary; but that this man lived at the ordinary of the house, is certain from his account, which charges him with fifteen days and a half, at 46 livres 10 sols, which is precisely at the ordinary rate.

The same observation is to be made upon N. 49, 50, 52, 76, 112, 113, 157, 172, 219, 220, 260, 287, 288, 289, and 412, all of which are in a similar situation, *i. e.* now-and-then an extraordinary article is furnished, for the most part beef-tea, in the way of medicine; at other times, an entertainment to a friend, and one particular person who staid upwards of a year in the house, is stated 49 livres extraordinary on the *maigre* days, which must have been owing to his being allowed *gras*, on account of his health, when the other lodgers had *maigre*. But, at the same time, he and every one of the persons have entered and are living at the ordinary of the house, and are stated at that price in the course of their account; so that the general proposition remains undoubted, that the book in question is a book for the ordinary.

It is of no consequence, that Godfroi does not say how his other guests were charged. In his first oath he deposed, That the book deposited in the Tournelle, was the only one which he kept for his lodgers in the year 1748, yet he afterwards produced the separate book now in process, which he was prevailed on by the pursuers to seek out, as the first one did not answer their purpose.

And here it is proper to observe, that the application of the blank account 4th July, is incredible, for this, among other reasons, that supposing Sir John and Lady Jane to have, in general, inclined to live at the ordinary, yet it is inconceivable that they should have been ten days in this hotel, without ever calling for a single article of meat beyond the ordinary fare of the table d'hôte.

The pursuers conclude this article with asserting, that the household-books in process contain accounts for the *whole* 299 persons in the police-book, except the 6 *who have been otherwise accounted for*. This is an assertion which has already been obviated. In the first place, it is not

not true that they have accounted for the six instances admitted by them. 2dly, Besides the six instances admitted, the defender has endeavoured to show that there are thirty-six, which, so far as can be made appear, have no relative entry in the household-book; and further, that from the size of this house, compared with the accounts in the household-book, there must have been numbers of lodgers in it, neither entered in the one book nor the other.

T E N T H O B S E R V A T I O N

Relates to the article of butter, and to the circumstances of tea, sugar, &c. which last being omitted in the blank account, shows that this account did not belong to Sir John Stewart.

The pursuers have been pleased to figure a very ingenious hypothesis with regard to this article of the breakfast. They say, that Sir John may have got tea, sugar, cream, and bread, from a coffee-house, or may have brought tea to Paris, and even sugar, and got cream and bread from the coffeehouse, while, at the same time, Mr. Godfroi furnished butter. The meaning of this seems to be, that they got one half of their breakfast from the coffeehouse, and the other half from Godfroi, or rather, that they got a third of it from the coffeehouse, a third from Godfroi, and that the rest was of their own furnishing. It is submitted how far there is any probability in such conjectures; none of the coffee-houses in Paris furnish tea, nor do they know how to make it; neither do persons ever send to a coffeehouse for bread, sugar, and cream, or for bread and cream. It is an acknowledged fact, that Lady Jane was in use to drink tea in the mornings and afternoons, wherever she resided in France, and, particularly, it is in proof that she did so in Michelle's. Supposing, therefore, that she had the precaution to bring tea along with her, she would still require the other necessary ingredients of cream, sugar, bread, &c. and these she would naturally be supplied with in the house itself where she lodged, more especially, as there are a variety of instances, in Godfroi's household-books, of bread, sugar, and other articles furnished to breakfast; some of these are mentioned in the defender's tenth observation, and he does insist, there are many more instances, both of milk and bread, which he shall point out, if disputed.

It is in proof, that while Sir John, Lady Jane, and Mrs. Hewit, were in Madam Lampson's at Liege, which is an inn precisely similar to Godfroi's, they were served with tea regularly twice a-day, to wit, to breakfast and in the afternoon. In Michelle's they could not be served with this or any other article of entertainment by the house, because Michelle's was merely a lodging-house, and not an inn; but in Godfroi's they were furnished with all their meals, and certainly got their breakfast from the house, as well as their dinner and supper.

Besides,

Besides the articles for breakfast, it appears from Godfroi's household-books, that it was a common thing in that house to furnish beer when called for, and if the blank account, 4th July, applied to Sir John and his company, it is very extraordinary that not one article should have appeared in it for beer. The instances of accounts in which beer is mentioned, are so frequent in the book that they will not be disputed, and need not be pointed out.

With regard to the article of butter, in the first place, there is none furnished from the 4th to the 9th. 2dly, Even from the 9th downward, it is not said to be for breakfast, and may have been at other meals, or for uses which are not known. It is an article which is generally very bad in French inns, being used only for dressing meat; and it is not probable that Lady Jane would be so fond of the butter of this house as to take it every day to breakfast.

ELEVENTH OBSERVATION.

As it is certain that Sir John, Lady Jane, and Mrs. Hewit, received letters while at Paris, and that these letters came directed to Godfroi's care, it appeared to the defender to be a remarkable circumstance, that nothing was stated in the anonymous account for the postage of letters; and it likewise appeared to be a necessary consequence, that Godfroi must have known something about Sir John's motions, after leaving that hotel, otherwise he would not have known how to convey his letters to him.

Answer.

The pursuers say, that while Sir John was in the inn, there was no occasion for Godfroi to pay the postage of the letters, as they would be carried directly to Sir John; and, after leaving the inn, Sir John would probably call for them and pay the postage, from the marking on the back, and that if Godfroi paid the postage of letters that came to him while at Dammartin, these would, more probably, have been stated in Sir John's account in August, whereas no such thing appears in that account.

Reply.

The defender has pointed out nine instances from the books, of postages of letters stated by Godfroi to his guests; and as the greatest part of the people that came to his house, appear only to have staid a few days, during which time it is not probable they would receive many letters, so the nine instances which have been pointed out, make it extremely probable that it was the general practice of Godfroi's family to receive the letters for all persons lodging in the house, and to pay the postages, which were afterwards stated in the accounts of those for whom they were paid.

And as to the letters which came to Sir John, Lady Jane, or Mrs. Hewit, after they had left Godfroi's house, it is much more natural to suppose, that they were sent by Godfroi to the house where Sir John lodged, than that they lay in Godfroi's till Sir John thought proper to call

call for them. Those which came to them at Dammartin could not reach them, unless Godfroi knew where they were, and how to convey the letters to them, as little could Godfroi receive the postage of such letters from the post-charges on the back, as the letters themselves were sent off; so that, as to the postage of these letters, he must have stated them somewhere, and if Sir John had had an account in the book, the most natural place was to have subjoined them to it. The account, 8th August, having only been opened for the few days that Sir John was in Paris, would not naturally contain any article of postage for letters which arrived before that account was opened; and it is probable Sir John received no letters during the four days he was at Paris in August.

T W E L F T H O B S E R V A T I O N.

This observation relative to the Burgundy, was intended by way of refutation of an argument used in the memorial, viz. that the blank account in July 1748, "was perhaps the only account in the book, in which a certain uniform quantity of Burgundy is charged, over and above the stated allowance."

The pursuers seem not now to insist in this argument, or at least they have changed it into a different shape, viz. that the quantity of Burgundy stated in the account is "a mathematical and infallible demonstration of the account's belonging to three persons." Answer.

If the book in question, be a book containing merely the accounts of those who lived at the ordinary of three livres per day, for entertainment and lodging, the defender admits the charge for wine to afford a strong presumption, that the account belonged to three persons. But if this book contains also the entertainment of those who lived *above the ordinary*, the defender denies the demonstration founded on the charge for wine, to be either mathematical or infallible; for supposing two persons to have lived at $4\frac{1}{2}$ livres per day, they would be intitled to the same quantity and value of wine, with three persons living at three livres per day. The pursuers, therefore, must either yield, that this book relates singly to persons living at the ordinary of the house, or they must admit, that the charge for wine in the account 4th July 1748, is no infallible proof that this account belonged to three persons. Reply.

T H I R T E E N T H O B S E R V A T I O N.

Under this observation the defender took the liberty of mentioning some few particulars in the oaths of Godfroi and his wife, in which
O
he

he apprehended, they had shown a partiality, or sworn contrary to truth ; and he concluded with mentioning the change of ground from an *alibi* in Michelle's to one in Godfroi's.

Answer.

In their answers upon this head, the pursuers seem to wave entering into particulars concerning Godfroi and his wife, but they give a long account of the time and manner of Mr. Stuart's receiving the information of Sir John Stewart's note to Mrs. Napier, in consequence of which, the first discovery had been made by him of the residence in the house of Michelle.

Reply.

As the pursuers have declined entering into any particular defence of Mr. and Madame Godfroi, the defender thinks it unnecessary to resume what has been said with regard to them in his memorial and original observations. One thing, however, may be here noticed, which ought more properly to have been mentioned under the first observation, but was there omitted. Madame Godfroi has sworn, that all the persons, who came to lodge in her house, were inserted either by name, or without name, in her book of expence, as soon as they arrived, unless when they came late at night, and went away early in the morning, in which case they might happen to be omitted. And Godfroi, on being asked the reason why the accounts in his books did not follow each other in the order of dates? depones, " That it arises from
 " this, that, when a guest arrives at the deponent's house, the deponent opens a particular account for him, for the continuation of
 " which he leaves *the rest* of the page blank ; and, when another person comes, the deponent begins an account for him upon another
 " page ; and, when *the first account is paid*, if there remains any blank
 " between these two accounts, the deponent makes use of it to write
 " down thereon a third account, which, although posterior in date,
 " will stand placed in the book, before the second account, which is of
 " a date anterior."

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Madame Godfroi has here deposed to her accuracy in opening accounts ; and Godfroi has explained, that, when any person arrives at the inn, he opens an account for him at the top of the page ; leaves the rest of the page blank ; and, after this person's account is closed, any space that remains on the same page is filled up with another account, the commencement of which must therefore bear date, subsequent to the payment of the first account ; so that, when a person arrives, for instance, to dinner, his account is either opened on the top of a page, or at the foot of a closed account, in the middle or near the end of a page. If on the top of a page, it ought to appear in the book, prior to any account, opened also on the top of a page, for a person who arrives in the evening of that day, or any subsequent day. Now, upon looking into the books, there are many instances, from which it clearly appears,

pears, that accounts have not been opened immediately upon the arrival of the persons to whom they belong, and that some of these persons have not been entered in the books for days after being in the hotel. Thus, in the household-book, at the top of page 11th, Monf. Vauprade is entered, as arriving on Saturday the 4th February 1747; but, upon looking at the top of the preceeding page, another person is there marked, as having arrived on the 5th February to supper, from whence it is clear, that Vauprade's account, though dated the 4th, was not opened till after the 5th, at supper.

In p. 112 of the household-book, at the top of the page, Mr. Fontaine appears entered on Sunday the 12th March 1751. The immediate preceeding page begins with an account of one Vviard, of date 20th of that month; from whence it follows, that Mr. Fontaine's account, though beginning the 12th March, was not entered in this book till after the 20th.

In the same way Mr. Coufin, p. 76, who is entered as arriving 2d April 1750, must have been opened subsequent to the 3d at supper.—Mr. Doigny's account of the 10th August 1750, must have been opened subsequent to the 11th at supper.—Mr. le Chevalier's account, of date 30th September 1751, must have been opened after the 2d October, when he had been three days in the house, as the last article of the preceeding account, on the same page, is dated 2d October. For the same reason Mr. Godenot, whose account begins 8th December 1751, must have been opened in the book after the 10th December. Mr. Charolois, p. 199, Mr. Rouvier, p. 200, Mr. Polonceau, p. 226, Montanclos, p. 230, Mr. Mainefix Comte de Lyon, p. 249, have all been fundry days in the house before any account has been opened for them. And other instances of the same kind might be given from the books. Household-book, p. 156.

From these instances two things seem to be clear, in the first place, that Madame Godfroi has not adhered to the truth, in swearing, that accounts were opened for her guests in the household-books immediately upon their arrival; for, besides the cases above mentioned, of persons who are entered in the police-book, without having any account at all in the household-book, it appears that many of those for whom accounts are to be found, have been for several days in the house, before these accounts were entered in the household-books. Whether they were retained on memory, or marked on separate papers, or in any other way, during that time, is to the defender unknown. But that such was the fact is plain, not only from what has been said, but from another circumstance, which proves it to a demonstration, viz. that, in many instances, there are a variety of articles of different dates, and sometimes

sometimes whole accounts, wrote visibly at the same time, and with the same ink.

2dly, Supposing any of these persons who have not been at first entered into the book, had left the inn, between the time of their arrival, and the time of inserting their accounts in the household-books, which, from the above instances, appears to have been sometimes a week, and often four or five days, it is highly probable, that the entering their accounts in the household-book would have been altogether omitted, as it became then unnecessary, and, consequently, no account would have appeared for them in the book, more than for Sir John Stewart.

With regard to the history given of Sir John Stewart's note to Mrs. Napier, it is surely a most immaterial circumstance in the cause, whether Mr. Stewart discovered it at one time or at another. The pursuers had said, in the pleading, that their knowledge of this note was *one of the reasons* why they inclined, in the beginning, to put greater faith in Michelle's books than in Godfrois, and to believe that Sir John, Lady Jane, and Mrs. Hewit had actually entered to Michelle's on the 8th. The defender, on the other hand, very naturally imagined, that this reason was affected; for, from Mr. Stuart's private memorials and journals in process; and from his letter to Mr. Baron Muir it did not appear that Mr. Stewart had any knowledge of that note; till after the ground had been taken with regard to Godfrois and Michelle. Mr. Stuart now says, that he was informed of this note at an earlier period, and that he had reasons for not making any mention of it in his private memorials; nor does he yet chuse to give the particulars of his information. All this may be extremely true; but the defender could not *divine* facts which were not in evidence, and of which a mystery is still made by the pursuers: but, true or false, in what shape does it avail the pursuers? or what difference does it make in the cause?—Supposing Mr. Stuart, in the beginning, not only had that, but a thousand other reasons, for believing Michelle and his books, rather than Godfrois and his books, what inference can thence be drawn in aid of Godfrois, or in support of the new-adopted system, contrary to the original system, which was apparently so much better founded? The defender does therefore apprehend it to be absolutely immaterial to enter further into a discussion of this fact, whether Mr. Stuart got intelligence of the note at one period or another; he will only observe, that the import of the note itself, and of Sir John Stewart's conversations with Mrs. Napier, and her evidence relative to them, has been greatly mis-stated by the pursuers, who are pleased to suppose, that Sir John was informed of enquiries made in France, and was told of the unsuccessful result of these enquiries, upon which he had corrected

rected the mistake originally fallen into by him. They accuse the defender of asserting facts with regard to this note, without sufficient enquiry into the foundation of them. But here they have put assertions into the mouth of Mrs. Napier which she never uttered. On the contrary, the defender has the best reason for asserting, that Mrs. Napier did not inform Sir John either of enquiries made, or of the result of them. And this the pursuers might have been satisfied of, had they been pleased to make enquiry at Mrs. Napier herself.

But enough has been said on the change of system, and the reasons of it. The fact is certain that the *alibi* was once placed in Michelle's, on grounds which were supposed to be infallible, but which are now given up. It is now placed in Godfroi's on evidence which was once disregarded, but is now said to be conclusive. The nature of that evidence has been stated to your Lordships, and from the specimens which have been given, and arguments used, you will judge how far you ought to concur with the pursuers in their *present sentiments* with regard to this *alibi*, contrary to their *first* opinion; or if you can deprive the defender of his state, upon a proof which the pursuers themselves once rejected as inconclusive.

In respect whereof, &c.

I L A Y C A M P B E L L.

Errata. In page 7, line 12 from foot, for *Police-books*, read Household-books. In p. 13, line 12, for *opening*, read continuation of Mr. de Parmentiers, &c. In p. 28, line 19, for 29 read 27. In p. 35, second reference, for p. 78, see p. 70. In p. 55, line 7, after 5 February, add *to supper*.



